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STUDIES

IN

CHURCH HISTORY.

THE RISE OF THE TEMPORAL POWER.—BENEFIT OF CLERGY.—EXCOMMUNICATION.—THE EARLY CHURCH AND SLAVERY.

BY

HENRY C. LEA.

Ahi Costantin, di quanto mal fu matre,
Non la tua conversion, ma quella dote,
Che da te prese il primo ricco patre!
Inferno, XIX.

PHILADELPHIA:
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PREFACE.

THE first of the following essays has already appeared, in a less extended form, in the North American Review. It records the establishment of principles of which the subsequent development is traced in the two succeeding essays. Throughout the whole I have sought rather to present facts than to draw inferences, and I have endeavored to confine myself to points which illustrate the temporal aspect of ecclesiastical history, showing how the church, in meeting the successive crises of its career, succeeded in establishing the absolute theocratic despotism which diverted it so strangely from its spiritual functions.

If in this I have appeared to dwell too exclusively on the faults and wrong-doing of the church, it has arisen from no lack of appreciation of the services rendered to humanity by the organization which in all ages has assumed for itself the monopoly of the heritage of Christ. Yet if we ask what would have been the condition of the world if that organization had not succeeded in bearing the ark of Christianity through the wilderness of the first fifteen centuries, in summing up the benefits which man has derived through the church, we may also not unreasonably inquire how much greater would have been our advance in all that renders us worthy of the precepts of the Gospel had that church always been true to its momentous trust.

Lactantius, rejoicing over the conversion of Constantine, in-

dulges in glowing anticipations of the approaching regeneration of mankind, when the false gods shall all be overthrown, and he alone be worshipped whose temples are not of clay or of stone, but are men fashioned in the image of their Creator: "If God alone were worshipped, then would war and dissensions be no more, for men would know that they are all children of the same Divine Father. Bound together in the sacred and inviolable bonds of heavenly truth, they would no more plot in secret against each other, when they would know the punishments prepared for the slayers of souls by an omniscient God, to whom all hidden evil and the innermost secrets of their hearts are revealed. Fraud and rapine would be no more, for men would have learned of God to be content with what they have, and to seek for the lasting gifts of heaven rather than for the perishable things of earth. Adultery and prostitution would cease when they were taught that God had forbidden disorderly appetites; nor would woman be forced to sell her virtue for a wretched subsistence, when men would control their passions, and charity would minister to all the wants of the poor. These evils would vanish from the earth if all were brought unto the law of God, and all should do what now our people alone are found to do. How blessed would be that golden age among men if throughout the world were love and kindness and peace and innocence and justice and temperance and faith! There would then be no need of many and subtle laws, where innocence would need only the one law of God. Neither prisons nor the sword of the judge would be wanted, when the hearts of men, glowing with the divine precepts, would of themselves seek the works of justice. If they are evil now, it is through ignorance of right and truth."[1]

[1] Firm. Lactant. Divin. Instit. Lib. v. cap. viii.

Read after the lapse of fifteen centuries, crowded with crime and misery, these glowing day-dreams of a Christian who looked for their speedy realization may excite the sneer of the cynic or the smile of the unbeliever; but no one who feels the sublime beauty and truth of the precepts of Christ can fail to mark with sorrow the immeasurable distance which has ever separated Christendom from the ideal of its aspirations. That our imperfect nature should be able to attain this ideal is of course impossible, but that we should still be so hopelessly afar from it may not unreasonably be attributed to that organization which assumed to be gifted with supernatural powers as the direct representative of Christ, and in His name sought and obtained complete authority over the souls and consciences of men. Had it been true to the law which it professed to administer; had it spurned the vulgar ambitions of power and wealth, and had it taught by precept and example the evangel of love, Christendom would not now, in the nineteenth century after the birth of the Redeemer, be groping as blindly as ever over the yet insoluble problems of existence.

PHILADELPHIA, November, 1869.

IN reprinting this volume occasional additions have been made which serve to illustrate still further the statements in the text. I have also appended a short essay on the relations of the early church towards slavery—a sphere of action in which it was more nearly true to its principles than in those discussed in the earlier sections of the volume.

MARCH, 1883.

CONTENTS.

The Rise of the Temporal Power.

The Church and the Empire.

PAGE

Subordination of the church under Christian emperors . . 13
Gregory II. defies Leo the Isaurian 25

The Church and the Carlovingians.

Allegiance of the church transferred from Constantinople to the Franks 31
Alliance between Pepin le Bref and Rome 32
Charlemagne carries out his father's policy 35
But maintains at all points the supremacy of the secular power 36
Advantage to the church of reviving the Western Empire . 38
Louis le Débonnaire maintains the subordination of the church 41
Lothair I. represses the attempted papal emancipation . . 43
Opportunities of the church in the failure of civil government . 44

The False Decretals.

Frequent use of forgery by the church 46
Riculfus of Mainz probably the originator of the False Decretals 48
The Canons of Ingilram 48
Charlemagne disregards the new doctrines 50
They become established in the anarchy consequent on the division of the empire 52
Speculations concerning the False Decretals 53
Their influence on European institutions 54
Their pretensions still maintained by the church . . 79

THE CHURCH AND THE STATE.

PAGE

Subordination of the church under the Barbarians . . . 61
Secular supremacy enforced by Charlemagne and his descendants 62
Adverse theories of the forgeries 67
Immunity of the clergy from secular accusation and trial . . 69
Spiritual jurisdiction—its origin and extension . . . 74
Asserted in the Forgeries and favored by the decline of the royal power 82
Episcopal investiture—election in the primitive church . . 87
Nomination of bishops by the Merovingians 89
And by the Carlovingians 92
Disputed by the church after the middle of the ninth century 97
The popes endeavor to obtain the nominating power . . 98
The bishops also strive to secure it 99
The metropolitans likewise take advantage of the general confusion 102
Division of the spoils between the sovereigns and the papacy 104
Episcopal oaths of fidelity 107
Their binding force under Charlemagne . . . 107
The bishops endeavor to escape them 109

THE PAPACY AND THE CHURCH.

Local autonomy of the primitive churches 112
Causes of the gradually increasing power of Rome . . . 113
Yet local independence is preserved in theory 116
A central head becomes necessary 117
General councils prove insufficient for this 117
Opportunities afforded to Rome by the quarrels of the East . 118
The rise of the Constantinopolitan church 119
Conflicts between Alexandria, Antioch, and Constantinople . 120
Triumph and downfall of Alexandria 121
Failure of Rome to reduce Constantinople to obedience . . 122
It is more successful in the West 123
Vicissitudes of the struggle 124
Universal appellate jurisdiction claimed for Rome . . . 125
It has no foundation in the primitive church 126
But is temporarily granted by the council of Sardica . . 129
The Sardican canons destitute of authority 130
Rome attempts to attribute them to the council of Nicæa . 133

PAGE
Appellate jurisdiction over Gaul obtained by Rome . . 135
Valentinian III. confers universal jurisdiction on the Roman church 136
But it is refused by the East 137
And by the Barbarian conquerors of the West . . . 140
Use of the *Pallium* introduced to strengthen the papal authority 142
St. Boniface endeavors to make the pallium obligatory . . 144
The Frankish prelates resist its introduction . . . 144
Special privileges accorded to render the pallium attractive . 146
Application for it enjoined on all metropolitans . . . 148
Appellate jurisdiction claimed in the False Decretals . . 149
Futile attempts to exercise it 151
It is vigorously enforced by Nicholas 152
Evils of the new system 155
Efforts of the church to escape from it 157
Finally established by Innocent III. 158
Corruptions and injustice wrought by it 159

Papal Omnipotence.

Applications of the power to bind and to loose 161
Supremacy of the papacy over secular rulers 164
The donation of Constantine 165
Nicholas I. reduces to practice the principles of the False Decretals 168
Papal omnipotence established by the case of Lothair and Teutberga 169

Benefit of Clergy.

Importance of the privilege of clerical immunity . . . 177
Claim of its origin in the council of Nicæa 178
Partial and temporary immunity granted by some of the Emperors 179
Disallowed by others 179
Justinian allows restricted immunity in certain cases . . 181
Successful efforts of the popes to obtain it 182

PAGE

It is refused by the Burgundians and Wisigoths . . . 183
Admitted by the Christian Britons 183
And by the Franks 184
But is practically disregarded 185
Restored in principle by the early Carlovingians . . . 186
But not admitted in practice 187
Charlemagne and Louis maintain the supremacy of secular law 188
Charles le Chauve forced to admit clerical immunity . . 190
Persistence of the church in asserting its claim to immunity . 191
Finally acceded to throughout Europe 193
Legislation of England 195
Benefit of clergy not abolished until the nineteenth century . 199
Legislation of Germany—triumph of the church . . . 200
Naples and Sicily—restrictions imposed on immunity . . 202
Lombardy—tardy recognition of the privilege 203
Spain—the privilege finally established 205
France—prolonged struggle to obtain clerical immunity . . 206
Abuses of the system—ineffectual efforts at reform . . 209
Compromise between the church and the state . . . 212
Cases illustrative of the protection afforded to criminals . 213
Protests of the church against encroachments of the state . 217
The church maintains its ground until the Reformation . . 219
Corruption in the church caused by immunity 220
Attacks of the reformers 221
The church attempts internal reform 223
Remonstrances of the orthodox at the council of Trent . . 224
Efforts of the council to evade the demand for reform . . 225
Conservative policy finally adopted 226
Resolute determination to maintain abuses 227
Corruption consequently flourishes unchecked 228
Independent spirit aroused in the laity—restrictions laid on clerical immunity 229
The church maintains its pretensions to the present time . 231

Excommunication.

PAGE

Power arising from the control of the sacraments . . . 235

Primitive Discipline.

The doctrines of the Gospels 236
Temporary character of the apostolic regulations . . . 238
Nature of the Eucharist in the primitive church—the agapæ . 239
Substantial character of the Eucharistic repast . . . 241
It becomes the symbolic bond of union 243
Its deprivation entails expulsion from the church and segregation 244
Necessity of coercive legislation within the church . . . 245
Growth and application of spiritual penalties 247
The church interposes between man and God 248
Expulsion from the church entails perdition 248
Temporal penalties—segregation 249
Repentant excommunicates—penitence 252
Simplicity of penance in the early church 253
Gradual increase of severity 254
The church assumes the functions of a lawgiver . . . 255
Prolongation of penitence—disabilities connected with it . . 256
Refusal of death-bed communion—varying policy of the church 258
The church assumes complete control over salvation . . . 259
Commencement of belief in purgatory 262
Variation of practice as to death-bed reconciliation . . . 262
Its insufficiency in cases of recovery 263
Excommunication of the dead—varying practice of the church . 264
Limitations on use of excommunication 266
Formal trial required 267
Lex talionis applied to unsuccessful prosecutor 269
Disregard of these rules—abuses 270
Excommunication degraded by its frequency 271
Interference of the state to prevent abuses 272
Police of the church—litteræ commendatitiæ 273
Enforcement of respect for excommunication 274
Policy of the church towards heretics—persecution . . . 276
The organization of the church gradually becomes despotic . 277

PAGE

Minute supervision of the hierarchy 279
Control acquired over potentates—Synesius, Chrysostom . . 280
St. Ambrose—excommunication of Theodosius 282
His example not imitated—subordination of the church . . 285
Courtly toleration of imperial sins 286

THE PAPACY.

Transmutation of spiritual into temporal power . . . 288
Rendered effective by concentration in the papacy . . . 289
Sources of papal authority—original and appellate jurisdictions 289
No supreme jurisdiction in the early church 290
Gradual assumption of supremacy by Rome 291
Ineffectual rivalry of Alexandria 292
Struggle between Rome and Constantinople 292
Papal use of excommunication in the East—humiliation of Constantinople 293
Papal use of excommunication in the West—Maximus of Salona 298

THE CHURCH AND THE BARBARIANS.

Dissociation of the clergy from the laity 300
Necessity of supernatural protection for the clergy . . . 301
Increased use of excommunication consequent thereon . . 302
Miraculous interpositions for the protection of the church . 304
Reverence inculcated for relics and for the Eucharist . . 308
Fearful punishment for disregard of excommunication . . 309
Use of excommunication to control the Merovingians . . 310
Difficulty of enforcing obedience—introduction of the Interdict . 311
Commencement of interpellation of secular power . . . 313
Secularization of the church under the later Merovingians . 314

CARLOVINGIAN RECONSTRUCTION.

Use made of the church as a civilizing agent 315
The state undertakes to enforce the censures of the church . 316
Especially with respect to its control over marriages . . . 318
And to protect it from spoliation 324
Yet Charlemagne restrains the abuses of excommunication . 325

Church and State.

PAGE
Louis le Débonnaire allows the church to control him . . 326
Confusion of secular and spiritual jurisdiction 327
Lothair I. pledges the power of the state to enforce excommunication 328
Increased authority of the church—degradation of Louis le Debonnaire 329
The church claims the right to call upon the secular power . 331
Spiritual censures disregarded in the increasing anarchy . . 333
The state seeks support from the church 334
And relies on excommunication for enforcement of the law . 337
Yet still controls the jurisdiction of the church . . . 338
Prerogatives enuring to the church from its alliance with the state 339

The Church and Feudalism.

Struggle of the church for self-preservation 342
Ferocity of anathema arising from desperation 343
Interposition of Providence to vindicate the anathema . . 348
Case of Robert the Pious of France 349
Opportunities of the church in the reorganization of society . 354
Use made of conflicting interests to break down each in turn and establish the theories of the Forgeries—Case of Henry IV. 355
Cases of Hugh of Gapençais and Philip I. of France . . 373
Triumph of the church over the empire 377
Power acquired to intervene in the affairs of states . . . 381
And to nominate to clerical preferment 383
Illimitable authority thus conferred on the church . . . 384
Concentrated in the person of the pope 385
Who is regarded as a God on earth 387
Corruptions arising from this irresponsible power . . . 391

Temporal Penalties.

Disabilities and punishments inflicted on excommunicates . 392
Segregation—penalties for intercourse with excommunicates . 393

PAGE

Secular legislation punishing excommunicates—in England . 396
in France 399
in Spain 405
in Germany 408
in Italy 413
in Poland 415
in Sweden 415
in Hungary 416

Abuse of Excommunication.

Power of oppression conferred by excommunication . . . 416
Insufficiency of monitions to be guarded in its use . . . 417
It is valid however wrongfully abused 418
Its prostitution for private ends 419
Secularization of its penalties 422
Refusal of sepulture 423
Subjection of nature to the anathema 426
It becomes simply a ban or curse 427
Excommunication of animals 428
Its use in supplementing the secular law 435
Employed for recovery of stolen property 437
And for the collection of debts 439
Aggravation of abuses caused by papal supremacy . . . 449
And by *ipso facto* excommunications 457

Emancipation.

Impossibility of internal reform in the church 459
Gradual tendency to resistance by the laity 460
Complaints of the abuses of excommunication 462
Reactionary spirit of the council of Trent 465
Conservative character of its reforms 466
Rapid growth of insubordination towards the church . . 469
Final emancipation of the state 471
Benefits to the church from the abolition of its temporal power 474
Reactionary efforts of its leaders 475

THE REFORMED CHURCHES.

PAGE
Inevitable insubordination of heretics 479
Wickliffe's views on excommunication 479
Followed by Huss 480
Lutheran doctrine and practice 480
Calvinist practice in France 494
in Scotland—abuse of power by the church . 498
The Anglican Church—abuse of power by the state . . . 508

THE EARLY CHURCH AND SLAVERY.

Slavery in Rome 524
Influence of Christianity 537
The Eastern Church 549
The Latin Church 553
The ordination of slaves 571

THE RISE

OF THE

TEMPORAL POWER.

THE CHURCH AND THE EMPIRE.

WHEN Constantine embraced Christianity, nothing was further from his intention than to abandon to the Church any portion of his imperial prerogative. He could not, it is true, be the Pontifex Maximus of his new religion, but it mattered little whether he personally performed the sacred rites so long as he retained supreme control over those who were privileged to do so. By the organic law of the Empire, the people, from the highest to the lowest, were all equally at the mercy of the monarch, whose powers were only limited by his own sense of prudence and justice, and against whom the only remedy was assassination or revolution.[1] Least of all could his autocracy be doubted by Christians who, even in times of persecution, had taught that their pagan sovereigns ruled by divine right and were second only to God.[2]

The church, therefore, formed no exception to this universal subordination, and fully acquiesced in its condition. Its faith

[1] Even in the sixth century, Justinian asserts autocracy to be the fundamental constitution of the empire. "Sed et quod principi placuit, legis habet vigorem, cum, lege regia, quæ de ejus imperio lata est, populus ei et in eum omuem imperium suum et potestatem concedat."—Institt. I. ii. 6.

[2] Colimus ergo et imperatorem, sic, quomodo et nobis licit, et ipsi expedit ut hominem, a Deo secundum, et quicquid est a Deo consecutum, solo Deo minorem.—Tertull. Lib. ad Scapulam cap. ii.

and discipline, its internal policy and its external privileges, were all subjected to the supremacy of the imperial power. Even when it gathered together in its most august and authoritative assemblies, the presumed inspiration of the Holy Ghost afforded it no exemption from this domination. The confirmation of the sovereign was requisite to confer validity on the canons of general councils, nor was that consent by any means given as a matter of course. Thus we find Constantius vetoing a portion of the canons of the synod of Rimini in 360,[1] and the acknowledgment of this subordination was expressed at the council of Tyre, during the heat of the Arian controversy, in 335, when the Catholic bishops appealed to Count Dionysius, the imperial commissioner, asking him to reserve the questions discussed for the decision of Constantine, whose prerogative it was to legislate for the church and its members.[2] How complete was the control thus centred in the person of the emperor is manifest in the rescript of Theodosius II. and Valentinian III. respecting the disgraceful scenes which marked the opening of the council of Ephesus in 431, under the lead of St. Cyril. The tumultuous conduct of the holy fathers is rebuked, and the intention is expressed of sending an officer of the palace to review the proceedings, and to set aside what may prove to be improper, while none of the bishops are to leave Ephesus, either for the purpose of returning home or of visiting the court, under pain of the imperial displeasure.[3] In fact, the business of general councils was regulated by imperial commissioners, who were laymen, and when the council of Chalcedon, in 451, had sat from the 8th to the 30th of October, we find these officials informing the assembled prelates that the work in hand must be hurried to completion, as grave affairs of state required their presence elsewhere, and they could not devote more time to the church.[4] Of course, under these conditions, all general synods were con-

[1] Lib. XVI. Cod. Theod. Tit. II. l. 15.
[2] Concil. Tyrium ann. 335 (Harduin. Concil. I. 543).
[3] Conciliab. Ephesin. cap. v. (Harduin. I. 1538–9).
[4] Concil. Chalced. Act. XII. (Ibid. II. 559).

vened by the authority and in the name of the sovereign;[1] and the pretensions of the Roman see to supreme authority in convoking and presiding over these bodies were too late in their origin and too fraudulent in their proof to merit extended examination. The lost canon of Nicæa—"non debere præter sententiam Romani Episcopi concilia celebrari"—might be alleged on the authority of endless texts drawn from the False Decretals, but no more substantial proof could be adduced in its support.[2] Ultramontane writers, it is true, are fond of quoting from Socrates and Sozomen a statement that, in 341, Julius I. angrily told the synod of Antioch that no council was lawful to which the Roman bishop had not been invited, nor its decrees valid without his confirmation;[3] and critics have endeavored to explain the reception of that synod as canonical, in the absence of such conditions precedent, by suggesting that two synods were held at Antioch in that year, one orthodox and the other Arian. The Greek historians, however, were disposed to give to the action of the Roman bishop as arrogant a character as possible. It was in the height of the Athanasian controversy, and the text of the letter of Julius shows that he complained simply of the proceedings as irregular, since the matter concerned the church at large, involving the loftiest Apostolic sees, and therefore the judgment of the whole church should have been taken on it. He did not demand that they should have written to him, but "us all, so that a just decision should be rendered by all."[4] Even these moderate pretensions, however,

[1] For the proof of this, with respect to the first four general councils—Nicæa, Constantinople, Ephesus, and Chalcedon—see Hardouin, T. I. pp. 345, 807, 1354; T. II. p. 54.

[2] Pseudo-Julii Epist. 2; Pseudo-Marcelli Epist. 1; Pseudo-Damasi Epist. 4 cap. 2.—Pseudo-Pelagii II. Epist.; Capitular. Lib. VI. cap. 381. —The argument in favor of the prerogative may be found briefly stated in Cabassut's Synopsis Concil. sub. Concil. Chalced.

[3] Socrat. H. E. II. 17.—Sozomen. H. E. III. 10.

[4] Julii PP. I. Epist. ad Antiochenos cap. XXII.—"δεῖ γραφῆναι πᾶσιν ἡμῖν, ἵνα οὕτως παρὰ πάντων ὁρισθῇ τὸ δίκαιον." The whole letter is expostualtory and not dictatorial.

were disregarded by the second general council, held at Constantinople, in 381, which decided the weightiest questions of faith and discipline, and which has always been acknowledged as œcumenic, even by Rome. The signatures to its decrees are headed by Nectarius, of Constantinople, and they contain the names of no representatives of Pope Damasus. Its proceedings were submitted for confirmation to Theodosius the Great and not to Damasus; and in the synodical letter addressed to the bishops assembled at Rome, including Damasus, St. Ambrose, and others, the Eastern fathers give their reasons for not attending the Roman synod, while they simply express the hope that the latter will rejoice over the restoration of orthodoxy in the East. There is nothing in their proceedings to suggest that they imagined that Rome had any voice in confirming the validity of their action.[1] When, indeed, the extension of Constantinopolitan prerogative, founded upon the action of this council, became alarming to Rome, Leo I. expressly denied that its decrees had ever received her assent,[2] without, however, weakening their claim to be respected as the voice of the church universal; and this council is included in the list of those to which the popes were obliged in their installation oath to swear allegiance.[3] In fact, even when the Western portion of the synod of Sardica sent a report of their proceedings to Julius I. they did so in terms which show that it was a novel thing, requiring to be explained; and they ordered him to communicate the results of their action to the bishops of Italy, Sardinia, and Sicily in a tone which excludes all supposition of any papal control over them and their acts.[4] If, therefore, the representative of Leo I., Paschasinus, Bishop of Lilybæum, had the honor of presiding nominally over the council of Chalcedon, it was not in virtue of any recognized prerogative, but because the pope had artfully requested it of the Emperor Marcian on the ground that, as Paschasinus had

[1] Harduin. I. 807, 26.
[2] Leo. I. Epist. cvi. cap. 5.
[3] Concil. Constant. Sessio XXXIX. (Von der Hard. T. IV. p. 1440).
[4] Epist. Synod. Sardicens. §§ i., iv. (Migne's Patrol. VIII. 919, 922).

not been personally involved in the quarrels connected with the Eutychian heresy, his appointment would be unexceptionable.[1] How little this presidency amounted to was shown when Eusebius of Dorylæum appealed in the council from the condemnation inflicted on him by the Robber Synod of Ephesus, and addressed his prayer, not to the council, but to the emperor, whose special attribute he asserted to be the protection of ecclesiastics from injustice.[2]

That the sovereign should intervene authoritatively in ecclesiastical disputes was therefore a matter of course. When, for instance, the apostolic see of Antioch was claimed by two rival bishops, St. Meletius and Paulinus, and a synod was held in 377 to decide between their pretensions, it was Sapor, the imperial representative, to whom both parties appealed, and who approved and enforced the extraordinary proposition of Meletius which gave two concurrent patriarchs to the church of the East.[3] So when, a few years earlier, the contested election of Damasus and Ursinus filled the streets of Rome with carnage, the disgraceful strife was only put an end to by the Prefect Maximin, who pronounced in favor of Damasus and inflicted severe punishment on both the lay and clerical adherents of his rival.[4] About fifty years later, when a similar disgraceful quarrel arose between Eulalius and Boniface I., the decision was referred, as a matter of course, to the miserable shadow of an emperor, Honorius, who appointed a vicar to act as temporary bishop of Rome during his examination of the question, and, after settling it in favor of Boniface, issued an edict to prevent the recurrence of scenes so unchristian, by providing that if two candidates should be consecrated, both should be driven from the city.[5]

The most unequivocal evidence of the imperial autocracy,

[1] Leon. PP. I. Epist. 89 (Ed. Ballerin).
[2] Concil. Chalced. Act. I. (Harduin. II. 70).
[3] Theodoreti Hist. Eccles. Lib. v. cap. 3.
[4] Socrat. Hist. Eccles. Lib. iv. cap. 29.
[5] Goldast. Const. Imp. T. III. pp. 587-92.—Harduin. I. 1238.

however, is to be found in the legislation of the period. The laws of the Christian emperors, from Constantine to Leo the Philosopher, manifest the absolute subordination of the spiritual to the temporal authority. The minutiæ of church government, the relations of the clergy among themselves, and to the state, their duties, their morals, and their actions, monastic regulations, the suppression of heresies—all the details, in fact, of ecclesiastical life, internal and external, are prescribed with the assurance of unquestioned power, and with a care which shows how large a portion of the imperial attention was devoted to the management of the church.

Under this despotic authority, the loftiest prelates were but subjects, whose first duty was obedience, and a long succession of feeble and worthless Cæsars was requisite before the able and vigorous men who occupied the bishopric of Rome could begin to emancipate themselves from the traditions of imperial authority. The persecution of Liberius by Constantius, for his bold adherence to the Athanasian creed under Arian preponderance, may perhaps be regarded as exceptional, since it was the work of an Arian; but no such exception can be taken to the council of Rome in 378, when, under the lead of St. Ambrose, it petitioned the Emperor Gratian, as a favor, that the Roman bishop, when accused, might always be tried by the imperial council, and urged, as a precedent of binding force, the trial and acquittal of Sylvester I. by Constantine.[1]

With the fall of the Western Empire, the church made some feeble efforts to assert its independence. Thus Odoacer, king of the Heruli, enacted a law forbidding the alienation of church property. Great as was this favor, the fact that it was the act of a layman rankled in the ecclesiastical mind, and, after the fall of the Barbarian king, the Roman synod of 502 pronounced it null and void on the ground that no layman had a right to interfere with the affairs of the church.[2] The absurdity of this

[1] Epist. Concil. Roman. ad Impp. (Harduin. I. 842.)

[2] Synod. Roman. IV. ann. 502, c. 3.

protest was manifest, for four years earlier, when Symmachus and Laurence contested each other's claims to the pontifical throne, Theodoric the Ostrogoth had intervened with all the authority of old, though, as an Arian, he was little better than a pagan in the eyes of the orthodox. He elevated Symmachus to the papacy, and gratified with a bishopric the defeated aspirant; and then, assembling a council, he caused the adoption of a canon designed to restrain the criminal ambition which brought so much dishonor on the Christian name.[1] When, moreover, a synod was convened in 501 to consider certain accusations against Symmachus, it was done in the name and by the authority of Theodoric, and when the assembled bishops demurred to sitting in judgment on their superior, Theodoric reassured them by stating that Symmachus had requested him to convoke them for that purpose, thus showing that the pope recognized the power as belonging to the king and not to himself. Yet the appointment by Theodoric of an ecclesiastic as "visitor," with authority to reform the disorders of the Roman church, was objected to by the synod as subversive of discipline; and the indignation which could not be gratified on the king was freely poured forth on the unfortunate visitor, who, in the exercise of his office, had doubtless carned the ill-will of influential prelates.[2]

The futility of these pretensions was shown when Theodoric sent Pope John I. on an embassy to the Emperor Justin, and, being dissatisfied with his performance of its duties, on his return threw him in prison, where, by opportunely dying, he won the honors of martyrdom.[3] The next Ostrogothic monarch, Athalaric, was no less absolute in his control of eccle-

[1] Synod. Roman. I. ann. 498.—Cf. Athalar. Const. 10. (Goldast. III. 95, 613.)

[2] Synod. Roman. III. ann. 501.

[3] Anastas. Biblioth. No. 55.—Cf. Martyrol. Roman. Mail 27.—The assertion that John perished under the persecuting zeal of the Arians comes with an ill grace from those who for thirty years had enjoyed the toleration of Theodoric—a toleration of which Arians alone were capable.

siastical affairs. Among his constitutions is one, addressed to John II., respecting the simony prevalent in episcopal and papal elections, in which, under a thin veil of courtesy, he regulates these tender points of discipline in a manner sufficiently imperious to show that the pope was his subject as completely as any other dignitary, and that his jurisdiction over the church was as unquestioned as over the state.[1]

Whether the royal power was wielded by the heretic or the orthodox made little difference. The kingdom of Italy, which, under the genius of Theodoric, had for a brief space rivalled the civilzation of former ages, soon became the battle-field on which Goth and Greek and Lombard by turns exercised a precarious dominion. When the victorious lieutenants of Justinian overthrew the Gothic dynasty, the popes were transferred anew to the sovereignty of the emperors, and the unlucky occupant of the pontifical throne during the revolution was the sport of both parties. Silverius, who had bribed the Arian Theodatus to force him on the unwilling Romans, redeemed his character by refusing to obey the commands of the orthodox Justinian with regard to the Patriarch Anthemius of Constantinople. His apocrisarius, or agent, at the imperial court, Vigilius, conspired with the Empress Theodora for his removal. A charge of treason was readily fabricated, under color of which Silverius was deposed and exiled by Belisarius; and, notwithstanding the irregularity of his installation, was duly canonized as a martyr.[2]

Theodora fulfilled her bargain with Vigilius, who was duly installed in the pontifical chair by Belisarius, but he was no more fortunate than his predecessor. The throne which he had gained by apostasy, simony, and false witness, he was obliged to secure by murder; and though he endeavored to elude the payment in gold and heresy which he had pledged, he was not allowed to escape by his imperial masters. In 544 the fulfilment of his written promise was exacted of him, and on

[1] Cassiodor. Variar. Lib. IX. cap. 15. [2] Anastas. Biblioth. No. 60.

his refusal, he was summoned to Constantinople, where he was subjected by Justinian to the depth of humiliation. Whether it was for his contumacy with regard to the Three Chapters, or for the crimes alleged against him by the Romans, is of little moment; and if his persecution was due to the vindictiveness of the empress, the degradation was the more bitter, as inflicted by a courtesan on the successor of St. Peter.[1]

Perhaps the most important feature of his career is the contradiction which it affords to the pretension that the concurrence of a pope, either in person or by legate, has always been requisite to the validity of an œcumenic council. The Fifth General Synod was held in Constantinople in 553, to condemn Theodore of Mopsuestia and the Three Chapters. Vigilius was then in the imperial city, and had assented to the assembling of the council, but, after many tergiversations, he declined to be present, and refused to join in the condemnation of Theodore. The council, after spending a day or two in urging his presence, proceeded to business without him. The holy fathers not only anathematized Theodore, but also all those who should refuse to join in the anathema; his defenders were stigmatized as Jews, and his followers as pagans.[2] They registered a decree of Justinian ordering the removal from the diptychs of the name of Vigilius, thus excommunicating him,[3] and the canons were issued in the name of Eutychius, Patriarch of Constantinople. This was so thoroughly at variance with the claims of spiritual leadership which Rome was now beginning to assert, that the West hesitated at first to receive the proceedings of the council as the unquestioned inspiration of the Holy Ghost, but it yielded ere long, and placed the assembly in the same rank with those of Nicæa and Chalcedon.[4]

[1] Ejusd. No. 61.—Victor. Tunenens. Chron. ann. 542–44.—Liberat. Breviar. cap. 22.

[2] Concil. Constantinop. II. Collat. III. (Harduin. III. 91.)

[3] Ejusd. Collat. VII. (Ibid. p. 187.)

[4] Quintum quoque concilium pariter veneror. . . . Quisquis aliter sapit anathema sit.—Gregor. PP. I. Lib. I. Epist. 25.

Even the vigor of Gregory the Great did not venture to question the supremacy of the temporal power. When the Emperor Maurice in 593 issued an edict reviving the old laws which prohibited the reception of soldiers in monasteries, Gregory felt acutely the blow thus dealt at the inviolability of the monastic vow, but the timid remonstrance which he uttered showed how implicit was the obedience to which he was bound. "What am I," he exclaimed, "but a worm and dust, thus to speak to my masters? . . . I have done what was my duty in every particular; I have obeyed the emperor, and have not hushed in silence what I felt to be due to God!"[1]

The subordination of the papacy to the Eastern Empire during this period is further shown by the necessity imposed on the popes of keeping a resident agent, or *apocrisarius*, at Constantinople, thus placing them on the same footing as the patriarchs of the East, whose subjection has never been questioned. By a law of Justinian, bishops were required to keep these apocrisarii at the residence of their metropolitan, and metropolitans with their patriarchs.[2] Agapet, who ascended the pontifical throne in 535, seems to have been the first pontiff subjected to this regulation, which could hardly but be regarded as an humiliation.[3] The emperors, moreover, reserved to themselves the right of confirming the election of the popes, and thus, in most instances, had practically the power of appointment. In fact, the election itself, under such circumstances, was probably as idle a form as that of the Merovingian bishops; and the number of apocrisarii who attained the papal throne—Vigilius, Pelagius I., Gregory the Great, Sabinian, Boniface III., Martin I., etc.—shows how well were understood the opportunities which that position conferred of obtaining the imperial favor.

When Justinian concluded to provide a successor for Vigilius without awaiting his death, the application of the Romans for

[1] Gregor. PP. I. Lib. III. Epist. 65.
[2] Novell. 123, cap. 25.
[3] Thomassin, Anc. Discip. de l'Église, P. II. Lib. 1, chap. 51.

Pelagius I. indicates that his appointment was virtually in the hands of the emperor;[1] especially as an expression of Victor Tunenensis warrants the belief that the prospect of obtaining the splendid prize converted Pelagius from a stern supporter of the Three Chapters into a courtly impugner of their orthodoxy.[2] The same power is confessed when Gregory the Great desired to avoid the burden of the papacy, and, to accomplish his object, secretly entreated the Emperor Maurice to refuse his confirmation of the election.[3] Indeed, the form of supplication by which the election of a pope was notified to the emperor and his permission was humbly requested for the consecration shows that the decision was unreservedly in the hands of the Cæsar.[4]

During this disastrous reunion of Italy with the Empire the interminable Monothelite controversy followed close upon the Monophysite heresy, and lent its powerful aid in embittering the relations between Rome and Constantinople. Among the ecclesiastical privileges of the Cæsars had always been assumed the right of dictating to the church its form of belief; and, whether the reigning conscience were orthodox or Arian, Eutychian or Monothelite, efficacious means were always found of enforcing conformity on the part of the hierarchy. The Western Emperors, for the most part, had troubled themselves but little with the subtleties of theological speculation, and the Arian Goths had tolerantly respected the established worship of Rome, so that the popes, as the primates of Latin Christianity, had gradually come to consider themselves as the guardians of orthodoxy. When Italy, therefore, found herself under the despotic rule of the successors of Justinian, the pretensions of the Holy See, as the arbiter of Christian doctrine, led to long and intricate quarrels. It would be unnecessary here to enter into these dreary details; suffice it to say that the arbitrary rule of the sovereign, when it could not enforce

[1] Anastas. Biblioth. No. 61.

[2] Victor. Tunenens. Chron. ann. 558.

[3] Greg. Turon. Hist. Franc. Lib. x. cap. 1.

[4] Lib. Diurn. Roman. Pontif. cap. I. tit. III.

an unworthy submission, had no hesitation in inflicting exemplary chastisement, as Martin I. experienced when in 655 he ended his days in exile for anathematizing the *Type* by which Constans II. endeavored to end the Monothelite controversy—and this in spite of the miracle which had protected the Holy Father from the first unhallowed attempt upon his person.[1] Yet at the same time the immense extension of ecclesiastical prerogative accruing to the papacy from the ceaseless wranglings of the East is shown by the act of the same Martin I., when in 649 he appointed John Bishop of Philadelphia apostolic vicar over the dioceses of Antioch and Jerusalem, with power to consecrate bishops and ordain priests throughout those extensive regions, at that time devastated by the conquests of the Saracens.[2]

If the next Emperor, Constantine Pogonatus, remitted to the popes the payment previously exacted of them on their installation by the emperors, he was careful to retain the right of confirming their election.[3] The diminishing power of Constantinople, however, was manifest in the failure of Justinian II., when he endeavored to follow the example of his grandfather and to punish Pope Sergius for his contumacy with regard to the acts of the *Quinisext in Trullo;* and Sergius enjoyed the rare and holy triumph of rescuing his intended captor, Zacharius the Protospatharius, from the enraged Italian soldiery.[4]

As the power of Greece declined in the West, the influence of the Apostolic See was making steady progress. The Greeks were foreign masters, exercising an odious despotism, and

[1] Anastas. Biblioth. No. 76. [2] Martin, PP. I. Epist. 5.

[3] Anastas. Biblioth. No. 81. It is true that Constantine some years later, in 684, ordered that the popes should be consecrated without delay on their election (Anastas. No. 83); but this lasted only two years, for in 686 we find that Conon, "ut mos est," was obliged to submit his election to Theodore the Exarch (Ibid. No. 85). In fact at times the imperial power of confirmation seems to have been intrusted to the Exarchs of Ravenna (Lib. Diurn. cap. I. tit. iv.–vii.).

[4] Ejusd. No. 86.

unable to defend Italy from the constantly widening ravages of the Lombards. Between the Greek and the Barbarian, almost equally hateful, stood the popes, the sole representatives of nationality, the sole defenders against tyranny. As the one permanent institution amid incessant change, the papacy was the only centre around which a national spirit could rally; and the increase of its temporal as well as spiritual authority might well appear to be the only feasible remedy for the pervading and increasing anarchy. This conviction was doubtless strengthened by the rule of celibacy which rendered it impossible for any occupant of the Holy See to found a dynasty; and the quasi-elective nature of the office, which made the popes in some sort representatives of the popular feelings, strengthened them in their struggles for common interests, and diminished the jealousy with which a new line of hereditary rulers might have been regarded.

Thus the time at length came for a formal declaration of independence, and under such leadership independence meant ecclesiastical supremacy. The occasion was well chosen, and the leader was not wanting. When Leo the Isaurian, in his iconoclastic zeal, decreed that image-worship should cease throughout the empire, the obedience which after some trouble he enforced in the East was refused him in the West. Less accustomed than the Greeks to mould their religious beliefs on those of the Cæsar, the Italians clung to their venerated symbols and effigies, and Gregory II. as their chief boldly confronted the sacrilegious emperor. Times had changed, he boasted, since Martin I. tamely surrendered himself to the heretical Constans. All the West now looked upon St. Peter as an earthly deity, and was united in abhorrence of the wicked sacrilege perpetrated throughout the East. If attempts were made upon his person, at four and twenty stadia from Rome he would find himself in safety, where the emperor might as well pursue the wind.[1] The open defiance of this address was

[1] Gregor. PP. II. Epist. 12.

not calculated to render agreeable the refusal of obedience, and Leo threatened to break down his rebellious spirit by force, to which Gregory responded with fiery audacity, for the iconoclastic crimes of the Isaurian could be fitly met only with the most awful anathema in the ecclesiastical armory—"Tyrannically you persecute us with the sword and arm of flesh. Naked and unarmed, guarded by no earthly armies, we invoke the Lord of hosts, Christ on high, leader of the heavenly virtues, to send unto you a devil, even as saith the Apostle, To deliver such an one unto Satan for the destruction of the flesh, that the spirit may be saved."[1] After this there was little prospect of accommodation, and at length the fleets and armies of the insulted monarch sought to reduce the incipient rebellion. Though Gregory had proudly asserted that his sole reliance was in God, he did not, when the persecution came, neglect the fleshly arm. Charles Martel was too busy in consolidating his power and making head against the Saracenic invasion to heed the appeal for assistance; but the Lombards declared for Rome, and when they in turn stood aloof a tempest shattered the forces of Leo, and the orthodox Latins were enabled to enjoy the peaceful satisfaction of excommunicating the heretical Isaurian and his obsequious hierarchy. It is true that their orthodoxy cost them the separation of Southern Italy and Sicily, which were not fully recovered from the Greeks until the foundation of the Norman kingdom of Naples, some three centuries and a half later.

The breach was evidently complete, and when a restoration of images rendered a reconciliation possible, the popes no longer looked to the East for their sovereigns. By a happy stroke of audacious policy, Gregory had thus availed himself of a strong popular feeling to present himself as the leader of Italy against the domination of Constantinople. In searching for allies, his keen eye had discerned the rise of a new power in Gaul and Germany, and the cherished scheme of Rome

[1] Gregor. PP. II. Epist. 13.

thenceforth was to link the fortunes of St. Peter with those of the family of Pepin.[1]

[1] It is not a little singular that those to whom Gregory appealed for protection against the Eastern Iconoclasts, and by whose influence the Latin church was supported during the quarrel, were fully as heretical in principle as Leo the Isaurian and Constantine Copronymus, though not animated with the persecuting zeal which led the latter to enforce their tenets with such unrelenting ferocity. As early as the year 305 the council of Elvira in Spain had forbidden that churches should be ornamented with paintings, or that objects of adoration should be depicted on the walls.[1] At the beginning of the seventh century, Serenus, Bishop of Marseilles, destroyed the images in the churches to prevent their adoration, whereupon many of his flock withdrew from his communion. Gregory the Great, in 602, addressed him, approving of his motives but strongly condemning his acts, on the ground that pictures and images were placed in churches not for adoration but simply to instruct the ignorant in ecclesiastical history, as a convenient substitute for writing, and that, therefore, they should not be removed.[2] The Synod of Gentilly, held by Pepin le Bref in 767, while allowing pictures and statues to remain as harmless ornaments in churches, declared that they should not be objects of any particular respect or veneration.[3] Nor was this merely a temporary assertion of independence, for three hundred bishops in the council of Frankfort, held by Charlemagne in 794, rejected with contemptuous unanimity the canons of the second general council of Nicæa;[4] and Charlemagne himself lent his all-powerful name to an elaborate refutation of the Roman teachings on the subject, in the Caroline Books, where he stigmatized the doctrines of the Nicene council as crazy, and his only concession was that he would not permit the wanton destruction of images.[5] As this council of Nicæa had been held for the purpose of reconciling the Eastern churches with Rome, as it was received as œcumenic and its acts had been formally approved by Pope

[1] Concil. Eliberitan. ann. 305, can. 36.

[2] Gregor. PP. I. Regist. Lib. XI. Epist. 13.

[3] Goldast. Const. Imp. I. 16—Cf. Harduin. III. 2012.

[4] Hartzheim Concil. German. I. 324—Goldast. op. cit. I. 18.—Annal. Vet. Francor. ann. 794 (Mart. Ampl. Collect. V. 903–4).

[5] Goldast. I. 23–114. Migne's Patrolog. T. 98, pp. 941 sqq.

Adrian, this was rank heresy. With all his aggressive energy, however, Adrian had sufficient discretion to gloss over this spiritual rebellion on the part of his benefactor, to whom he owed so much, and to whom he hoped to owe more, and he, therefore, contented himself with a doctrinal refutation of his patron's errors.[1] So determined was the resistance of the Western churches that when the reformatory zeal of Claudius, Bishop of Turin, led him to abolish all the images in his diocese, in spite of the injunctions of Charlemagne, he was exposed to nothing more formidable than the dreary polemics of Theutmir and Dungal.[2] St. Agobard, of Lyons, who was superior to so many of the superstitions of his time, was not disposed to allow them even as ornaments;[3] while the council of Paris, in 825, reaffirmed the doctrines of the synod of Frankfort.[4]

Louis le Débonnaire endeavored to bring about an accord on the subject, and in sending to Rome two bishops with the proceedings of the Paris council he had no scruple in expressing to his envoys his dread of the "Roman pertinacity," and he cautioned them to be careful lest by too rigorous an upholding of the Western doctrine they should lead the papal court into irrevocable antagonism.[5] Not long afterwards Walafrid Strabo, Abbot of Reichenau, whose character stood deservedly high for learning, piety, and orthodoxy, treated of images in a spirit identical with that of the Caroline Books, showing that the second council of Nicæa continued to be held in utter contempt. He admits the propriety of placing pictures and statues in churches as objects of art and decoration, but is careful to deprecate the veneration with which they were often foolishly regarded; he will not concede to them any special sanctity, but compares them to the ornaments of Solomon's Temple—flowers, trees, and beasts. At the same time he objects strongly to icono-

[1] Hadriani PP. I. ad Carolum Epist. (Harduin. IV. 773).

[2] Mag. Biblioth. Patrum, Ed. Colon. 1618, Sæc. IX. ii. 875.

[3] Agobardi de Pict. et Imagin. This is to be found in the edition of Papire Masson (Paris, 1605, p. 212), but the edition was consequently at once put in the Index Expurgatorius, "donec corrigatur," by decree of Dec. 16, 1605. The treatise was therefore carefully suppressed in the works of Agobard as given in the Magna Biblioth. Patrum, but may be found in Migne's Patrologia, Tom. 104.

[4] Goldast. Const. Imp. I. 154. The proceedings of this synod are not admitted into the great collections of councils, but Migne gives it (Patrolog. T. 98, p. 1293), with ample apparatus to correct its heterodoxy.

[5] Baluz. I. 663 (Ed. Venet.).

clasm, and is very severe on Claudius of Turin,[1] whose logic was distasteful to reverent minds when he argued that if the cross is to be adored, girls should be adored because the Virgin bore Christ, and so also stables because Christ lay in one, and asses because he rode on one.[2]

It is true that the council of Trent draws very delicate distinctions between worship, adoration, veneration, etc., and points out the exact quality of respect due to paintings and images with a refinement not easily appreciated by the popular mind which naturally transfers to the representation the veneration due theoretically only to the thing represented.[3] The organ of the new school of liberal Catholics in Italy defines the orthodox doctrine taught by the church to be that God alone is to be adored, the saints are to be venerated, and images only to be respected, but it admits that adoration of images is largely practised, and that it is encouraged as a "useful superstition" by many whose position renders it difficult for the church to escape responsibility for their acts.[4] In fact, when special miraculous powers are attributed to certain images or pictures, which are thus rendered the objects of particular veneration, the worship of the holy subject infallibly merges into the worship of the representation. The image becomes no longer merely a vehicle to elevate the grosser intellects incapable of abstraction, and the worship before the specially sacred object becomes so nearly idolatrous that it is impossible to draw a definite line of demarcation.[5] In the middle ages there was no attempt to draw such a line, nor were special miracle-working images requisite to call forth authoritative commands for image worship. How little, indeed, these subtleties were appreciated previous to the Reformation is manifested by the remark of Geroch of Reichersperg, in the twelfth century, that the cross is rightly put forward by the church to be adored by both the wise and the simple;[6] and what this adoration was is shown in the

[1] Walafrid. Strabon. de Rebus Eccles. cap. viii.

[2] Chron. Turonens. ann. 878 (Martene Amp. Coll. V. 973).

[3] Concil. Trident. Sess. XXV. De Invoc. Sanctor. See also the distinction between *latria*, *dulia*, and *hyperdulia* in Alphonso de Silva's *Fortalicium Fidei* Lib. iii. Consid. 4 (Ed. 1494, fol. 106 *b*).

[4] Esaminatore, Firenze, 1 Agost. 1867, p. 237.

[5] Mr. Lecky has treated this matter with his accustomed clearness and acuteness in his admirable "History of Rationalism," Chap. III.

[6] Gerhohi Lib. de Gloria Filii Hominis (Pez Thesaurus, T. I. P. ii. p. 197).

oath imposed, in 1396, on the iconoclastic Lollards—"that fro this day forthward I shall worship ymages, with praying and offering unto them in the worschop of the saintes that they be made after."[1] And in 1400, at the trial of William Sawtree for Lollardism, by the convocation of the province of Canterbury, the first article alleged against him was "that he will not adore the cross on which Christ suffered, but only Christ suffering on the cross."[2] So, in 1414, one of the heresies imputed to the branch of the flagellants known in Thuringia as Brethren of the Cross was that they refused to worship the cross of Christ, and the images of the Virgin and saints, denouncing all such worship as idolatry.[3] About the same time, the clear intellect of Gerson perceived the danger to which the purity of faith was exposed by these decided tendencies of the ultra-orthodox, and in his enumeration of the reforms necessary to the church he says: "Judge whether it is well to have so great a variety of pictures and images in the churches, and whether they do not pervert many simple folks to idolatry."[4] And it was probably owing to his influence that, in the second trial which he urged forward against Jerome of Prague, at the council of Constance, the proper doctrine was incidentally expressed that pictures and images are only meant to stimulate the religious feelings.[5] Even after the council of Trent, however, the orthodox Simancas, Bishop of Badajos, in a book dedicated to Gregory XIII. and printed in Rome, "cum permissu superiorum," declared that the same veneration and adoration is to be paid to images as to the saints which they represent—"Eadem autem veneratio exhibenda est imagini, quæ sanctis ipsis; honor siquidem imagini exhibitus ad prototypum refertur; et qui adorat imaginem adorat et sanctum illum cujus forma et figura est imago." (Jacob. Simancæ de Cathol. Instit. Tit. XXXIII. No. 9.—Romæ 1575.)

During the progress of the Reformation, the council of Frankfort and the Caroline Books were duly appealed to by the Protestants in support of their doctrines as to images. At the Colloquy of Poissy they formed a prominent subject of debate, when the

[1] Wilkins Concil. Anglic. III. 225.

[2] Ibid. p. 255.

[3] Quod crucem Christi et imagines gloriosæ virginis aliorumque sanctorum nullus debeat adorare, quia in ipsorum adoratione committatur idolatria.—Artic. xlvi. ap. Theod. Vrie, Hist. Concil. Constant. Lib. IV. Dist. xiii.

[4] Gersoni Declarat. Defect. Viror. Ecclesiast. No. 67.

[5] Von der Hardt T. IV. p. 674.

Catholics, instead of accepting the principles set forth in them, endeavored to impugn their authenticity, and, moreover, alleged that the council was merely provincial and not œcumenic, and that the tract of Charlemagne had never received the approbation of Adrian I.[1]

THE CHURCH AND THE CARLOVINGIANS.

The policy of Gregory II. in seeking the support and alliance of the Barbarians of the West was fully appreciated by his successor, Gregory III. After some overtures to Constantinople, couched in terms which insured their rejection, he followed in the same path. So subordinate, however, was the position of the ecclesiastical power, that, until after the middle of the century, the Roman councils and the papal rescripts continue to bear the dates of the reigns of the heretical emperors. It is true that when, on the death of Leo, the usurper Artavasdes obtained temporary possession of the throne, the Roman notaries eagerly seized the opportunity of using the name of an orthodox monarch; but when the son of Leo put down the rebellion, they obediently adopted his date in turn, until the Frankish alliance raised a rival to the elder empire. Up to 772 the papal documents bear the name and date of the hated Constantine Copronymus, the vigorous upholder of the Iconoclastic sacrilege.[2]

So little thought, indeed, had the popes of maintaining their position of independence, that a new lord paramount was immediately sought as soon as they had successfully defied the

[1] Lettere del Cardinale di Ferrara (Baluz. et Mansi Miscell. T. IV. pp. 385-6). The question of idolatry seems to be settled to the satisfaction of the orthodox in a recent discussion on the subject of Mariolatry, wherein it is proclaimed that other objects besides God can properly be worshipped, provided it be not "divine" worship, and divine worship is defined to consist in the sacrifice of the Mass. Everything short of this is therefore permissible.

[2] Jaffé, Regesta.

heretic Leo. Assuming the disposal of thrones, Gregory III. offered to Charles Martel the sovereignty of Rome and of Italy as the price of active assistance against the encroaching and detested Lombards. The services of Luitprand, however, were too recent, and their common enemy, the Saracens, too active and dangerous, to permit the wary Frank to dazzle himself with visions of transalpine conquests, and in return for the keys of St. Peter laid at his feet he returned only flattering words and rich presents.[1]

Of old the weighty javelin of the Franks had earned for itself the respect of Northern Italy, when the Merovingian chiefs found leisure amid family dissensions for a wild foray across the Alps. The empire of Clovis, so long rendered powerless for foreign aggression by ceaseless civil wars, was now consolidating its forces under the stern and able hands of its Austrasian dukes, and the time soon came when common interests and reciprocal services elevated the aspiring leaders of church and state to the summit of their respective ambitions. When Pepin le Bref, disdaining at length the farce of delegated power under which for two generations his family had ruled the state, sought to unite the dignity with the reality of royalty, he seems to have felt that some unusual solemnity was requisite to consecrate to himself and his children the election which placed a usurper on the Merovingian throne. The facility with which the allegiance sworn to Childeric was transferred to a new suzerain was not reassuring to the founder of an upstart dynasty, and some novel sanction was felt to be necessary to guarantee the perpetuation of a new race. Every consideration conspired to lead the pope to gratify the wishes of Pepin. The Lombards were a perpetual menace, and the persuasiveness which had converted King Rachis from a conqueror to a monk could hardly be relied upon as a safe precedent for the future. To

[1] Gregor. PP. III. Epist. 5 (Cod. Carolin.).—Fredegar. cap. 110.—Chron. S. Bertin. cap iv. P. ii. cap. v.—Annal. Vet. Francor. (Martene Ampl'ss. Collect. V. 888).

bind a new and powerful ally with the strongest ties of gratitude, and to secure for the successor of St. Peter the disposal of thrones and the judgment of the destinies of kings, were advantages not lightly to be despised. When the deputation of the Franks asked the Vicegerent of Christ what choice was to be made between a king without power and a king without title, the answer was therefore unhesitating; and the Carlovingian historians are careful to specify that the transfer of royalty and the enforced tonsure of the degraded regal spectre were commanded by the unerring wisdom of the Supreme Pontiff.[1] The buckler of the Field of Mars—the warlike installa-

[1] Eginhart. Annal. ann. 752.—Ejusd. Vit. Car. Mag. cap. 1.—Annal. Fuldens. ann. 752.—Ado Viennens.—How dangerous were the favors of the church is well exemplified by this. When came the struggle which eventually laid the empire prostrate at the feet of the papacy, this deposition of Childeric did not fail to be adduced in proof of the supremacy of the spiritual over the temporal power. Christendom was hardly prepared for the extension of jurisdiction claimed by Gregory VII. when, in 1080, he excommunicated Henry IV., pronounced him to have forfeited the imperial dignity, and recognized Rodolph of Suabia as his successor; but Gregory defended his acts by quoting the example of Zachary and Childeric: "Alius, item Romanus Pontifex, Zacharius videlicet, regem Francorum non tam pro suis iniquitatibus, quam eo quod tantæ potestati non erat utilis, a regno deposuit, et Pippinum, Caroli Magni imperatoris patrem, in ejus loco substituit, omnesque Francigenas a juramento fidelitatis, quod illi fecerant, absolvit" (Gregor. PP. VII. Regist. Lib. VIII. Epist. 21). So Paul of Bernried, in arguing the same question, relies on the same precedent (Pauli Bernried. Vit. Gregor. VII. No. 86). Honorius III. haughtily refuses to entertain a doubt upon the question—"Quis ergo, nisi mente captus, ignorat regiam potestatem pontificibus esse subjectam" (Vit. Gregor. VII. No. 6)—showing how complete was by that time the triumph of the papacy. The Schwabenspiegel (cap. 351, ed. Senckenberg. II. 422), in admitting for the pope the right to dethrone and excommunicate a heretic emperor, bases it on the action of Zachary, and asserts the justification of it to have been the protection accorded to heretics by the deposed monarch "Leschandus," and a treatise attributed to Thomas Aquinas does not fail to make use of the same argument (De Principum Regimine Lib. III. cap. x.).

Even after the Reformation, the case of Childeric was still quoted to prove the papal power of deposing kings.—Jacob. Simancæ de Instit. Cathol. Tit. XLV. No. 25 (Romæ 1575).

tion of the primitive Franks—was not sufficient for the intruder; the ministry of the church must sanctify the transfer, and St. Boniface, the apostle of Germany, consecrated the head appointed by the pope, thus proclaiming that the suffrages of the nation were insufficient without the blessing of the priest. Even this, however, was not enough. When Stephen II. claimed the services of his ally, and journeyed into France to implore the aid of the secular arm, after proving the insufficiency of clerical authority to control the restless and sacrilegious Lombard, a second coronation by his holy hands was not only a fresh proof of his supremacy, but also the price of the assistance which he desired. He assumed, indeed, that Pepin's title was incomplete without this last ceremony:[1] and when the Lombards proved troublesome after their first defeat, he did not scruple to tell the Frankish King that he had been crowned by St. Peter for the sole purpose of defending the Apostolic church.[2] In his eagerness to fortify the throne for his descendants, Pepin little thought how dearly the church was accustomed to sell her favors, and how that throne was eventually to be overshadowed by the power based upon the precedents which he was thus establishing.[3]

[1] See his letter to Abbot Hilduin in Regino, Annal. ann. 753.

[2] Cod. Carolin. cap. 7.

[3] I think it safe to assume that the coronation of Pepin by Boniface is the first instance of priestly ministration on such occasions. The allusion to a similar ceremony performed by St. Remy on the person of Clovis (Testament. S. Remigii. ap. Flodoard. Hist. Remens. Lib. I. c. 18) is evidently one of the innumerable forgeries by which the church in those days manufactured precedents to bolster up its pretensions. Its whole tenor is so completely at variance with the customs of its assigned period, that it must be admitted as an interpolation of the ninth or tenth century.

The unforeseen results of Pepin's incautious interpellation of sacerdotal ministration were instructively manifested in little more than a century. Pepin's great-grandson, Charles le Chauve, who held his kingdom of France by all the rights, hereditary, testamentary, and elective, that were recognized by the public law of the period, was told, after a reign of more than twenty years, by Hincmar of Rheims, that he owed his sovereignty much more to the episcopal unction and benediction than to the temporal power (Hincmar. pro Eccles. Libertat. Defens. Expos. I.). A century

Meanwhile the alliance prospered, and Pepin hastened to perform his share of the contract. Two Italian expeditions brought Astulphus the Lombard to reason, restored to the Holy See—or rather to the Roman Republic—the territory of which it had been despoiled, and added to its boundaries important provinces, which the generosity of the conqueror, careless of such distant acquisitions, bestowed on him to whom he owed his crown. The promise of the first of these expeditions Stephen had obtained when he was in France by throwing himself at Pepin's feet, his head covered with ashes, and vowing never to rise until his prayers were granted.[1] To the second he aroused the Frank by the bold device of forging a letter from St. Peter himself addressed to Pepin, a letter in which the chief of the Apostles promised to his house and to the Franks prosperous fortune and length of days on earth and special mansions in Heaven if they would relieve the Apostolic city from the besieging army of the Lombards, and threatened eternal damnation as the penalty of delay.[2] The union thus cemented by mutual benefits was lasting; nor did the ambitious Frank complain, even if he recognized the fact, that the papal munificence had secured to its dispenser eventual advantages far greater than those which it had bestowed.

Charlemagne inherited his father's alliance. Scarcely had he reunited the divided kingdom by disinheriting his brother's

later, St. Stephen of Hungary, in his instructions to his son, adduces, among other reasons for rendering special honors to bishops, that without them kings and princes cannot be elevated to the throne (S. Stephani Hung. Reg. Monit. ad Filium c. iii.). Towards the end of the eleventh century Honorius of Autun asserts that the emperor is to be chosen by the pope, with the consent of the princes of the empire, and gives as a reason that kings are made so by prelates and not by nobles.—Honor. August. Summa Gloria c. iv. (Pez Thesaur. II. i. 198.).

[1] Annal. Vet. Francor. (Martene Ampl. Collect. V. 890).

[2] Cod. Carolin. cap. 10. The date of this precious missive is 755. Catholic critics have assumed that Stephen II. only pretended to speak with the voice of St. Peter, but I think no one can read the epistle without recognizing it as a premeditated forgery, presented to the Franks as an authentic declaration from Peter himself.

children, when, on the invitation of Adrian I., he invaded Italy, to put an end to the perennial quarrel between Rome and Lombardy. The resistance was stubborn, notwithstanding treason in the Lombard camp, but Charlemagne was not accustomed to leave his work incomplete. The generosity of Pepin was no longer in place, and the spoils were divided between the royal and sacerdotal confederates, who mutually confirmed the extension of territory acquired by the sword of the one and the prayers or intrigues of the other. The dread inspired by the Lombard must have been intense and the donation splendid, for the grateful Adrian, calling a council of one hundred and fifty-three bishops, conferred on his deliverer not only the Patriciate, but also the privilege of nominating all future successors to the Holy See.[1] Charlemagne had received the sacred oil and benediction from the holy hands of Stephen II. at the same time as his father; but in due course another generation appeared to claim the same advantages, and the kingdoms of Italy and Aquitaine were secured to the royal infants, Pepin and Louis, by the efficacious ministration of the accommodating Pontiff, who was equally ready to extend his jurisdiction in another direction, by excommunicating the rebellious subjects of his liberal patron.

Step by step the process of mutual aggrandizement went on while the subordination of the spiritual to the temporal power was undisputed. The Patriciate of Rome, to Charles Martel an empty honor not worth the responsibilities connected with it, had become to his grandson a substantial dignity, which secured the subjection of the papacy. The confirmation of the papal elections was in the hands of the Frankish king, to whom each new pope sent a solemn embassy to offer the emblematic keys and banner, and to ask the opportunity of rendering the necessary oath of allegiance. Charles was the suzerain of Rome and of its bishop, who, notwithstanding his primatial rank,

[1] The authenticity of this grant has been called in question. Its genuineness will be considered hereafter.

was merely a subject, to be addressed in the language of royal command, and in no way exempt from the jurisdiction exercised over all other dignitaries of the Frankish dominions. Thus, when Leo III., in 796, announced his election to Charlemagne, the latter acknowledges with courtly phrase his pleasure in receiving the assurance of humble obedience and the pledges of fidelity to the throne offered by the pope;[1] and the instructions to his envoy on the occasion of Leo's consecration were that he should diligently admonish the pope to live with propriety and to obey the canons.[2] When, in 799, a conspiracy was formed against Leo, who was seized, his tongue cut out and an attempt made to blind him, and he succeeded in escaping and flying to Charlemagne, on his being restored by the latter, he made no attempt to punish the guilty parties, but sent them to the Frank, who condemned them to exile.[3]

In fulfilment of his duties as supreme judge, Charlemagne, in the year 800, visited Rome on the solemn errand of trying Leo for offences alleged against him by the factious Romans. The position of the Pontiff was that of a subject before his sovereign, a criminal in the presence of his judge; but the wily Italian by a master-stroke reversed the position, and created for his successors a power which may almost be said to have secured their ultimate triumph. After the pre-arranged acquittal of the pope, while Charles was humbly kneeling at his devotions in the Basilica of St. Peter, his brows were suddenly encircled by the imperial crown, confirmed with the papal benediction, and the populace shouted for the new Emperor of the Romans—"Carlo Augusto, a Deo coronato, magno et pacifico Imperatori Romanorum, vita et victoria." Whether this clever *coup de théatre* was in reality a surprise to the passive actor in it, or whether it had been rehearsed the year

[1] "Valde, ut fateor, gavisi sumus, seu in electionis unimitate, seu in humilitatis vestræ obedientia, et in promissionis ad nos fidelitate."—Epist. ad Leonem Papam (Baluz.).

[2] Carol. Mag. Commonitor. ann. 796 (Baluz. I. 195).

[3] Annal. Vet. Francor. ann. 799 (Martene Ampl. Coll. V. 906).

before at Paderborn, when Leo had laid his griefs before his protector, is of small importance. If, as Eginhardt asserts, Charlemagne accepted the unexpected dignity with reluctance,[1] he only manifested therein his customary sagacity. To him it was nothing but a name, which in no way enhanced his real power, but which, among his descendants, proved a source of endless and ruinous contention.[2] The pope, on the other hand, had revived, *motu proprio*, the glories of the elder empire.[3] Not only was Constantinople humiliated and degraded from its solitary dignity, but throughout the West, as the creator is always greater than the created, the pope, while no less a subject than before, had vastly increased the moral supremacy of his high office.[4] His successors learned to turn the precedent to good account, and the necessity of papal intervention to convert a king of the Romans into an emperor

[1] Eginh. Vit. Carol. cap. 28.

[2] Charlemagne may have had a foreshadowing of the evils arising from the possession of the imperial crown, for in his *Charta Divisionis* of 806, he makes no allusion to it as being heritable, nor does he bestow it upon any of his sons. They are all to be kings, and even the sovereignty of Italy confers no additional supremacy on Pepin.

[3] When Rodolph of Hapsburg confirmed the papal possessions in Italy to the pope, one of the reasons given was that the Holy See had transferred the empire to the Germans from the Greeks.—Cod. Epist. Rodolphi I. p. 80 (Lipsiæ, 1806).

[4] How thoroughly this came to be understood is manifest from a passage in the canons of the Synod of St. Macra, in 881, where the bishops, in contrasting the regal and sacerdotal dignity, give this as the argument for the supremacy which they claim for the latter—"Et tanto est dignitas pontificum major quam regum, quia reges in culmen regium sacrantur a pontificibus, pontifices autem a regibus consecrari non possunt" (Synod. ap. S. Macram, cap. 1). Even in England, in 1142, during the imprisonment of King Stephen, when his brother Henry, Bishop of Winchester, called a council of the clergy, in a speech directed against the king, he spoke of "majori parte cleri Angliæ, ad cujus jus potissimum spectat principem eligere, simulque ordinare" (Wilkins Concil. I. 420). A tract which formerly passed under the name of St. Thomas Aquinas finds in the transfer of the imperial crown from the Greeks to the Germans a sufficient proof of the supremacy of the pope over the empire.—De Principum Regimine Lib. III. cap. xviii.

on more than one occasion turned the scale in difficult conjunctures, or enabled the Pontiff to sell his benediction at his own price, as when the fagot and stake of Arnold of Brescia purchased the imperial crown for Frederic Barbarossa. Nor was this all, for even as the right of confirmation practically gave to the emperors the appointment of popes, so, when protracted dissensions reduced the temporal power, the popes in turn became able to nominate their emperors. Even before the close of the century, the quarrels between the grandsons of Charlemagne gave to John VIII. the power to select between them; and he, who could not defend his own suburbs from the Saracens, or keep the petty barons of Gaeta or Capua in order, was able to assume the bestowal of the diadem of Augustus.[1] A charter issued by John XII., in 962, a few days after the coronation of Otho the Great, assumes that the emperor received the imperial crown from St. Peter through the hands of his representative.[2] When Innocent III. declared that the pope had a right to examine and reject emperors after their election, if he did not deem them worthy of the dignity, he took care to base the privilege on the gift of the imperial crown to Charlemagne by Leo;[3] and this power was too frequently exercised for it to remain a disputed point, as is shown by the humble supplication addressed to Gregory X., in 1273, to bestow the imperial crown on Rodolph of Hapsburg, after his election, and the pope after due delay replied that he had, in consultation with his advisers, concluded to nominate Rodolph as King of the Romans and invite him to Rome to be crowned, as though the suffrages of the electors had merely been a preliminary ceremony.[4] It was the natural result of these prin-

[1] Act. Synod. Pontigonens. cap. 1 (Baluz. II. 345).

[2] Annal. Saxo ann. 962.

[3] Can. 34 Extra Lib. I. Tit. 6.

[4] "Pro quo sanctitatæ vestræ piissimæ duximus humillime supplicandum quatenus ipsum pro bono statu totius Reip. Christianæ imperii diademate dignemini insignire." (Cod. Epist. Rodolphi I., Lipsiæ, 1806, p. 7.) "Te Regem Romanorum de ipsorum consilio nominamus." (Ibid. p. 25.) Even this condescension may perhaps be attributed to the gift of

ciples that John XXII., in his quarrel with the Emperor Louis of Bavaria, was able to assume that the imperial authority and power are derived from the pope, and that he who is elected King of the Romans cannot, from his election alone, be really considered emperor, nor exercise power, jurisdiction, or authority before his consecration and coronation by the pope.[1] Charles IV. was obliged to admit all this when, prior to his election, he swore to the pope that if elected he would, before asking coronation, submit his person to the papal approbation, which was thus admitted to be a condition precedent;[2] and Clement VI. in graciously confirming the election took occasion to declare not only that the power of the Imperial Electors was a grant from the popes, but that the empire itself was derived from and limited by them.[3] Bishop Alvarez Pelayo was, therefore, justified, in 1335, in proving from the decretals that the emperor was merely the vicar of the pope in temporal

1000 mares a year assigned by the electors to the pope on the imperial revenues. (Ibid. p. 41.)

[1] Ludov. IV. Respons. (Hartzheim IV. 323).

[2] Jurament. Carol. IV. ann. 1346 (Lünig. Cod. Ital. Diplom. II. 771). The eagerness with which every incident was turned to account in the long struggle for supremacy is well illustrated by the fact that when in 1133 Lothair II. reinstated the wandering Innocent II. who had been ejected from Rome by the antipope Anaclet, and when he was rewarded with the bestowal of the imperial crown, before his coronation he swore to defend the person and rights of the pope. The oath, as given by Baronius from the Vatican MSS. (Annal. ann. 1133, No. 2), is in no sense an oath of homage, but it pleased the papal court so to regard it, and the popes recorded their assumed triumph by a painting hung in the Lateran, representing Lothair at the feet of Innocent, with the explanatory inscription—

> Rex venit ante fores juraus prius urbis honores.
> Post homo fit Papæ, sumit quo dante coronam.

When Frederic Barbarossa first entered Rome this excited his indignation, and he exacted its removal (Radevic. de Gest. Frid. I. Lib. I. cap. 10). In 1157, Adrian IV. renewed the pretension, but the prompt measures of Frederic quickly obliged him to abandon it formally.

[3] Cod. Epist. Rudolphi I., Auct. II. pp. 365, 370 (Lipsiæ, 1806).—Potestas enim imperialis catholica et approbata a papa originatur, a papa exemplatur, ad papam terminatur.

affairs and derived from him the title to the empire.[1] Leo had thus, by a simple expedient, succeeded in counterbalancing the imperial supremacy which had existed from the days of Constantine.

The precedent from the first was binding. Although, when Charlemagne associated his son Louis in the empire, in 813, he performed the ceremony of coronation himself at Aix-la-Chapelle, apparently mistrustful of papal or sacerdotal ministration,[2] and though the pope was not asked to ratify the solemnities which marked Louis's accession on his father's death in 814, yet Stephen IV. seized the opportunity of their interview at Rheims, in 816, to crown and anoint him emperor with a diadem which he had brought with him from Italy for that purpose, and Louis's faithful biographer is careful not to style him emperor until after that consecration.[3] That the ceremony was considered necessary to perfect the imperial dignity may also be gathered from an inscription by Ebbo, Archbishop of Rheims, Louis's foster-brother, commencing—

"Ludovicus Cæsar factus, coronante Stephano."[4]

Charlemagne apparently considered the papal assent and ratification requisite to give binding force to his division of the empire in 806, and Louis le Débonnaire followed his example in 817.[5] Still, the subordinate position of the popes as subjects and vassals of the empire continued unaltered. When in 815 a conspiracy was discovered by Leo III., and he exercised summary justice in dispatching the criminals, Louis, irritated at this invasion of his jurisdiction, sent his nephew, Bernard,

[1] De Planctu Ecclesiæ Lib. I. Art. 68 No. I.

[2] Eginhart. Annal. ann. 813.—Thegan, who, though not so good an authority as Eginhardt, gives a much more detailed account of this ceremony, asserts that Charlemagne ordered Louis to place the crown on his head with his own hands (Thegani de Gest. Ludov. cap. 6), which seems to indicate a suspicion that the priestly alliance might turn out to be an expensive one.

[3] Thegani op. cit. cap. 17. Cf. Eginhart. Annal. ann. 816.

[4] Flodoard. Hist. Remens. Lib. II. cap. 19.

[5] Eginhart. Annal. ann. 806.—Agobardi de Divis. Imp. Epist.

King of Italy, to investigate the matter, and Leo was obliged to make his peace with the emperor by a special legation. In the following year, his successor Stephen IV., immediately on his election, hastened to solicit Louis's confirmation, and travelled with all diligence into France, ostensibly to crown the emperor, but doubtless, in reality, to secure his position.[1] It was possibly in fulfilment of a condition imposed on him at this time, that in the same year he caused a canon to be adopted in synod providing that for the future no newly elected pope should be consecrated except in the presence of imperial delegates sent for that purpose, guarding the papal rights, however, with a clause that no new form of oath should be exacted of the Vicegerent of Christ.[2] This was neglected in the case of the next pope, Paschal I., who was consecrated without waiting for the imperial ratification, but the necessity for it was admitted by a deprecatory epistle which he prudently dispatched to his suzerain, asserting that he had been unwillingly forced to undergo the ceremony, against his strenuous resistance.[3]

Louis's gentle character was eminently unsuited to the ferocity of the age, while his sensitive superstition rendered him the willing slave of his ghostly advisers. Unable to control the fierce elements of discord around him or to resist the encroachments of ecclesiastical ambition, he allowed his influence to diminish rapidly. Emboldened by this, Paschal soon took another and an important step in the enhancement of the papal prerogative. In 817, Louis had crowned his eldest son, Lothair, and had placed him on the throne as co-emperor, in precisely the same manner as he himself had received that dignity at the hands of Charlemagne. In 823 he sent the

[1] Eginhart. Annal. ann. 816.

[2] Gratian. Decret. Dist. 63 can. 28. The genuineness and date of this have been the subject of no little controversy. An allusion to it, however, by Nicholas I., in the council of Rome in 862, would seem to settle the question in favor of its authenticity.

[3] Eginhart. Annal. ann. 817.

young emperor to Italy, to repress some disorders there. His mission accomplished, Lothair was about to return, when Paschal invited him to Rome, received him with all honor, and solemnly crowned him as Emperor and Augustus—and this, to all appearance, without the knowledge or consent of his father. This independence of action was followed up shortly afterwards, when two officials of high repute in the papal court were cruelly murdered in the Lateran, and Paschal was popularly accused of complicity in the crime. He endeavored to escape the imperial jurisdiction by hastily clearing himself of complicity by a purgatorial oath before the arrival of the commissioners dispatched by Louis to investigate his connection with the murders, but he nevertheless acknowledged his accountability to the emperor by two legations sent with his explanations.[1]

These efforts of the Holy See to shake off the imperial domination called for some counter-demonstration, and it is probable that the reckless and energetic Lothair was less willing than his father to permit any curtailment of his ancestral prerogatives. When, therefore, Paschal died during the following year, and his successor, Eugenius II., after a hotly contested election, contented himself with sending a legate to apprise the emperors of his accession, Lothair proceeded at once to Rome. Eugenius was compelled to subscribe a written oath of allegiance, and another oath was administered to all the Romans, lay and clerical, in which they swore not only fidelity to the emperors, but also that they would never consent to the installation of a pope elect until after he should have taken a similar oath before a special imperial commission ;[2] and Lothair's ex-

[1] Eginhart. Annal. ann. 823.

[2] "Et ille qui electus fuerit, me consentiente, consecratus pontifex non fiat, priusquam tale sacramentum faciat in præsentia missi domini imperatoris et populi, cum juramento quale dominus Eugenius papa sponte pro conservatione omnium factum habet per scriptum" (Baluz. I. 438). The expression "pro conservatione omnium" renders it probable that Lothair had manifested his indignation by proceedings so violent as to awaken fears for the safety of the city. The change occurring during the

ercise of sovereign power was further shown by an edict limiting the extent of suffrage in future elections.[1] These proceedings had the desired effect for the time, and when, in 827, the chair of St. Peter was again vacant, the consecration of Gregory IV. was postponed until the arrival of an envoy with powers to confirm his election. The effort, however, was too late. Events were hurrying on which were destined to render all such measures futile, and Lothair himself was one of the chief instruments in the hands of Providence by which was accomplished the revolution of European institutions, resulting in the power of the priesthood and the irresponsible autocracy of the pope.

The turbulent ambition of Lothair and his two brothers, their hatred of their stepmother Judith, and their envy of their half-brother, Charles le Chauve, the youngest, best, and most beloved of the children of Louis, filled the rest of his miserable reign with open war or secret intrigues. His death added fresh fuel to the flame, and until the exhausted combatants swore a hollow truce at the Treaty of Verdun, in 843, the empire was a scene of universal confusion. This parricidal and fratricidal strife, continuing with scanty intermission until the close of the century, reduced the royal power to a shadow. Truth, faith, loyalty, patriotism, all the virtues which lend stability to governments, seemed unknown. Everywhere the chiefs and deputies of the nominal monarch, striving for independence and hereditary authority, were bartering their allegiance, and wringing fresh concessions from the infatuated brethren, as the price of their fidelity or of their treachery. The only element of universal anarchy lacking was supplied by the external enemies of the empire. Invited by ceaseless civil

century is well exhibited by comparing this oath with that taken by the Romans on the coronation of the Emperor Arnoul, in 896, wherein the papal claim to their allegiance is expressly reserved—"salvo honore et lege mea, atque fidelitate domni Formosi papæ, fidelis sum et ero omnibus diebus vitæ meæ Arnulfo imperatori" (Annal. Fuldens. ann. 895.)

[1] Bouz. II. 317.

conflict, on every side the Northmen poured in upon the unguarded coasts, ascended the rivers, and, gathering confidence from almost uninterrupted success, ravaged every portion of France and of the fertile Rhinelands. On the West the Bretons, on the East the Wends and Serbs, on the South the active and unsparing Saracens, released from the terror of the invincible Charles, revenged the wrongs and the humiliations of generations. Faction in the council, discord in the court, cowardice or treachery in the field, could offer inadequate resistance to the only power which maintained its unity, which understood its aims, and which pursued its purposes with energy and consistency. Nor is it surprising that the people, ground to the dust by the senseless quarrels of their rulers, exposed alike to the unchecked tyranny of their immediate masters, the devastations of neighborhood wars, and the hideous barbarities of pagan pirates—the people to whom civil government was known only as an instrument of oppression, and never as a means of defence or redress—should turn in despair to the church as the only source of consolation in the present or of hope in the future, should welcome any change which tended to elevate the spiritual power at the expense of the temporal, and should give eager credit to the doctrine which taught that the Vicegerent of Christ and his ministers were paramount over those who had so wofully abused their trust.[1]

[1] The manner in which the church at times earned the gratitude of the masses while extending its power and influence, is well illustrated in the election of Guido as King of Lombardy, by the bishops assembled at Pavia in 888 or 889. One of the conditions imposed on him was that no exactions or oppressions should be inflicted on the people; but that if, in any case of the kind, the counts did not actively interfere to repress it, they should be excommunicated by the bishops—thus rendering the latter the legal protectors and guardians of the liberties of the people.—Widonis Regis Elect. cap. v. (Muratori Antiq. Ital. Dissert. III.)

THE FALSE DECRETALS.

In this remoulding of European institutions, so necessary to the interests of Christianity and civilization, one of the most efficient agencies was the collection of canons known as the False Decretals. Forgery was not by any means a novel expedient to the church. From the earliest times orthodox and heretics had rivalled each other in the manufacture of whatever documents were necessary to substantiate their respective positions whether in faith or discipline, and the student of history finds the difficulty of his task perpetually heightened by the doubtful nature of the evidence adduced by one party or another with all the earnestness of conviction. This tendency to fabrication was conspicuously a characteristic of the papal court, which was constantly under the necessity of manufacturing testimony to prove the antiquity of its continually enlarging pretensions. The interpolation of the Sardican canons among those of Nicæa, perpetrated by successive popes from Zozimus to Leo I., the fabulous excommunication of Arcadius by Innocent I., the fictitious epistles and councils of Silvester I., the *Gesta Liberii* and the trial of Sixtus III., the interpolated epistles of Gregory I. respecting the prohibition of marriage to the seventh degree and the excommunication of kings; the epistle of St. Peter to Pepin le Bref, and the Donation of Constantine are all examples of the clumsy audacity with which the Vicegerents of God, with more or less success, imposed on the credulity of the faithful. There evidently was some code of morality established in the minds of leading ecclesiastics which led them to believe that all means were allowable for the maintenance and extension of church prerogative, and forgery thus became traditional as one of the agencies to be called into play whenever a desired object could not be obtained without it.[1] It can scarcely then be a matter

[1] The reader who desires a rapid summary of the frauds perpetrated by the papal court will find the subject well treated in "The Pope and the Council," by "Janus."

of surprise that recourse was now had to the accustomed instrumentality, and that a forgery was planned on a larger and bolder scale than had previously been attempted. About this period there began to circulate from hand to hand a collection of Papal Epistles, on which the names of the early Bishops of Rome conferred the authority of the primitive and uncorrupted church, instinct with pure and undisputed apostolic tradition. The name assumed by the compiler was Isidor Mercator, or Peccator, and as the original copy was said to have been brought from Spain, he was readily confounded with St. Isidor of Seville, the eminent canonist, who, two centuries before, had enjoyed a wide and well-merited reputation for extensive learning and unquestioned orthodoxy.

Denis the Less, who, in the first half of the sixth century, made an authoritative collection of canons and decretals, commences the latter with Pope Siricius, whose pontificate reached from 384 to 398; and there are no earlier papal epistles extant in the nature of decretals. When, therefore, the decisions and decrees of more than thirty apostolic fathers, of venerable antiquity, were presented under the sanction of ecclesiastics high in rank and power, and when these decrees were found to suit most admirably the wants and aspirations of the church, it is no wonder that they were accepted with little scrutiny by those whose cause they served, and who were not accustomed to the niceties of strict archæological criticism. It could hardly be expected that a prelate of that rude age would analyze the rules presented for his guidance, and eliminate the false, which served his interests or his pride, from the true, with which they were skilfully intermingled. Some, more enlightened than the rest, perceiving that, if their own power was enhanced, at the same time their bonds of subjection to the central head were drawn closer, muttered faint and cautious doubts; but the vast majority received the new decretals with unquestioning faith, and though political causes delayed their immediate adoption, yet soon after the middle of

the century we find them received with scarcely a dissentient voice. How, indeed, could their authenticity be seriously disputed, when, as soon as they became fairly known in Rome, Nicholas I. gave the world to understand that they were to be found among the most venerated and carefully preserved documents of the papal archives?[1]

Riculfus, who occupied the archiepiscopal see of Mainz from 784 to 814, is credited with the paternity of this, the boldest, most stupendous, and most successful forgery that the world has seen. Whether or not it was brought from Spain by him, or constructed under his supervision, there is little doubt that he employed himself industriously in disseminating copies.[2] Another collection, somewhat less bold in its pretensions, but equally destitute of authority, had made its appearance a little earlier, having been given by Ingilram, Bishop of Metz, to Adrian I., in 785; and it was likewise extensively circulated and cited, although Hincmar of Rheims condemns it as bearing

[1] Nicolai PP. I. Epist. 75.

[2] Hincmar, created Archbishop of Rheims in 845, thus describes the introduction of the False Decretals: "Sicut et de libro collectarum epistolarum ab Isidoro, quem de Hispania allatum, Riculfus Moguntinus episcopus, in hujusmodi sicut et in capitulis regiis studiosus, obtinuit et istas regiones ex illo repleri fecit;" and he evidently considers them as of dubious authority, when he declines to cite them in support of his argument, because he had plenty of authorities from among the popes after Damasus—"superfluum duxi non necessaria in medium devocare" (Opusc. adv. Hincm. Laudun. cap. 24). This does not, however, prevent him from using them when later and more unimpeachable precedents are wanting. Thus (op. cit. cap. 14) he adduces an epistle of St. Anacletus, whose pontificate dates within twenty years of the death of St. Peter, in which is described a complete hierarchy, such as in the ninth century was regarded as the perfection of church government—bishops, metropolitans, archbishops, primates, and patriarchs, with the Roman Pontiff as supreme ruler, issuing without appeal his commands and decrees. (Pseudo-Anaclet. Epist. 1, 2, 4, 5.) Hincmar's long opposition to the papacy was fruitless, and, in 878, John VIII. obliged him at the synod of Troyes to disavow formally his incredulity as to the authority of the Decretals.—Flodoard. Hist. Remens. Lib. IV. cap. 29.

falsehood on its face.[1] Other documents of various descriptions were also fabricated for the same purpose, and indeed it is probable that the whole series grew by gradual accretion under the hands of those who were watching the progress of events, and who became emboldened by the ease with which they escaped detection.

An examination of these documents, in fact, leads to the conclusion that they were not the result of one effort or the work of one man. Their constant repetitions and their frequent contradictions would seem to prove this and to show that they were manufactured from time to time, to meet the exigencies of the moment or to gratify the feelings of the writers. Had the whole been composed by one person, with a definite individual purpose in view, there would be much more unity perceptible throughout. It is also highly probable that the authors, seeing how little attention had been excited by the canons of Ingilram, devised the plan of embodying the same principles in the form of papal epistles, to which they affixed the names of the early popes, thus hoping to secure for them additional authority. At the same time it must be borne in mind that as yet the spiritual autocracy of the popes had by no means been admitted to the extent claimed for it in these decretals, and subsequently acquired through their influence. When Gelasius, in 494, issued the decisions of the council which regulated the canon of Scripture and the authority of

[1] "Quam dissonæ inter se habeantur, qui legit satis intelligit, et quam diversæ a sacris canonibus, et quam discrepantes in quibusdam ab ecclesiasticis judiciis habeantur, ut hic quædam de pluribus ponam, evidenter manifestatur" (op. cit. cap. 24).—According to some MSS. it was Adrian who gave them to Ingilram.

In one of Charlemagne's visits to Rome, in 774, 781, or 787, Adrian gave him a collection of canons for the government of the Western churches. This collection is simply the compilation of Denis the Less, containing none of the false decretals. At that time Adrian, therefore, was evidently ignorant of the forgeries, and the principles and pretensions of Ingilram and Isidor were as yet unknown in Rome.

the Fathers, he was careful to draw the distinction between the obedience due to the canons of councils and the doctrines of the early Fathers and that claimed for papal epistles. The former were to be "et custodienda et recipienda," the latter merely "venerabiliter suscipiendas."[1] Hincmar enlarges on this difference, which he declares to be well understood by all familiar with ecclesiastical rules;[2] and, in 872, writing to Adrian II. in the name of Charles le Chauve, he begs the pope not to send any more epistles contrary to the ancient canons of the church, as all such are to be rejected and confuted as being devoid of authority.[3]

It is true that the success of the forgeries at first was rather negative than positive, and their earliest practical promulgation as rules for daily use would appear to be in the canons compiled for his diocese by Remy, who was Bishop of Coire from 815 to 830. Charlemagne, indeed, as early as 806, had admitted an earlier forgery into a capitulary,[4] but in general the influence of the Pseudo-Isidor over his legislation and government is imperceptible. His power was too absolute and

[1] This distinction is not found in all the MSS. See the comparison of texts in Migne's Patrologia, T. 59, pp. 170–2. It is contained, however, in the canon as given by Ivo of Chartres (Decret. P. IV. cap. 64) and Gratian (Decret. P. 1 Dist. 15 can. 3), and its citation by Hincmar, as mentioned above, shows its high antiquity and probable genuineness.

[2] Opusc. adv. Hincm. Laudun. cap. 25.

[3] Goldast. Const. Imp. I. 205–6.—Migne's Patrol. T. 124, p. 894. It was very easy to render each fresh prerogative a stepping-stone to another, and the popes lost no opportunity of enforcing respect for their decretals. Thus, towards the end of the century, we find John VIII. refusing the pallium to Wilibert of Cologne because, among other things, he had omitted in his declaration of faith to specify his adhesion to the Decretals (Gratian. P. I. Dist. c. can. 4).—How completely they succeeded in this is well exemplified in a declaration of Alexander II. to Philip of France in 1065: "Ignorant miseri quod hujus sanctæ sedis decreta ita pia fide a filiis matris ecclesiæ accipienda sint et veneranda ut tanquam regula canonum ab cisdem absque ullo scrupulo admittantur."—Alexandri PP. II. Epist. 95.

[4] Capit. Carol. Mag. I. ann. 806 § 23.—This was probably derived from Ingilram, cap. 72, who obtained it from a forgery of the sixth century.

his temper rendered opposition too dangerous for any serious attempt to limit his control over ecclesiastical matters. Though he made full use of clerical influence in carrying out his designs of a strong and civilizing government, yet obedience to his will was the condition of its existence; nor, while he labored strenuously to enforce respect for the church, would he permit it to exercise interference in affairs not connected with its special office.[1] His influence was too profoundly impressed upon the age to be immediately obliterated, and for some years after his death the empire maintained the dignified force with which he had invested it. With Louis le Débonnaire, however, there came a change. His virtues and weaknesses rendered his power a prize for whoever had the boldness and ambition to clutch at a fragment of it, and the penance of Attigny in 822, while it degraded him in the eyes of the fierce Frankish warriors, proclaimed to the world that priestly influence was all-powerful in the state.

It would indeed have been singular if the church had not pressed forward in the path thus thrown open, and had not claimed all the supremacy to which it was invited. Accordingly we find that the bishops soon appear as the ruling order in the state, sitting in judgment on the emperor, deposing, absolving, and reinstating him by turns—doing, in the name of heaven, that which the reckless nobles still shrank from assuming as an earthly prerogative. This placed a material power in hands well qualified to use and extend it; and though, during those busy years of anarchy and strife, the church had enough to do in protecting her property from the hands of the spoiler, and was unable to combine her forces seriously and steadily for the attainment of new privileges and exemptions, still, the influence of the prelates, as potent members of the

[1] This jealousy of sacerdotal encroachment is well expressed in a capitulary directing the clergy and the laity not to interfere with one another. "Hic interrogandum est acutissime quid est quod Apostolus ait *Nemo militans Deo implicat se negotiis sæcularibus*, vel ad quos sermo iste pertineat."—Capit. Carol. Mag. I. ann. 811 § 4.

civil government, vastly increased the political weight of the ecclesiastical body, and placed them in a position to make good whatever innovations they might seek to establish. In restoring order after the long and lawless struggle, it was also comparatively easy to assume that the pretensions then first seriously advanced were merely the resuscitation of rights, familiar to past generations, which had been forgotten and trampled on in the fury of civil war.[1] At the same time the partial quiet which succeeded the Treaty of Verdun soon made manifest the pressing need of a strong ecclesiastical government. The empire of Charlemagne was then finally divided, and the nationalities of Europe spontaneously separated themselves into the limits which have virtually been maintained to the present day. Had the church remained, as of old, under secular control, it would probably have been split into fragments; its unity would have been lost, and the spiritual tyranny which alone could maintain the influence of religion amid the turmoil of so barbarous an age would have become impossible. To elevate the sanctity of the sacerdotal character; to enlarge the power of the bishops over the laity and the inferior clergy, the control of the metropolitans over their suffragans; to emancipate all from subjection to the temporal power, and to bind them more strongly to the foot of the apostolic throne—such was the only apparent solution to present and prospective difficulties. If it was carried out by fraud and forgery, we should remember the trials and temptations of the time before passing too severe a condemnation on those who planned and executed the scheme.

The date, the author, and the immediate object of the False Decretals have given rise to keen speculation and fierce dispute, particularly among modern German critics, whose theories, more or less plausible, it would be useless to recapitulate or refute here. The views of the Ballerini, Wasserschleben, Gfrörer,

[1] Jura sacerdotum penitus eversa ruerunt.
Divinæ jam legis amor terrorque recessit,
Et scita jam canonum cunctorum calce teruntur.
Florus Diac. de Divis. Imp.

Walter, Knust, Hefele, Phillips, and others, may be found well summed up and stated by Heinrich Denziger,[1] but the principal interest of the discussion lies merely in its proving how the over-subtle refinements requisite to support a preconceived theory may mislead intelligent investigators. Those who see in these forgeries an effort merely to increase the power of the pope, or, on the other hand, to enlarge the prerogatives of the metropolitans, or, again, to render the bishops independent, take a view by far too narrow of the motives and the results of the attempt. In fact, the philosophizing tendencies of recent historical criticism have led to the assumption that the influence of the False Decretals had previously been greatly overrated. This I take to be an error, easily committed by those to whom the novelty of a brilliant sophism is more attractive than the triteness of a commonplace truth; and though the causes above described contributed doubtless to the success of the forgeries, it by no means follows that those causes would have produced the same effects had not the disturbed elements of society thus been artificially moulded. It is certain that about the middle of the century a great and silent revolution in the relations between church and state commenced, and it may fairly be assumed that these new canons were the instrument with which the ecclesiastical party worked upon the general popular readiness to submit to such a change of masters.

To estimate the influence of these canons and other cognate forgeries requires an attentive examination into the jurisprudence and legislation of the period, which they interpenetrate to an extent that shows how thoroughly they modified the condition of society in all its ramifications. Interpolated into codes of law, adopted and amplified in the canons of councils and the decretals of popes, they speedily became part and parcel of the civil and ecclesiastical polity of Europe, leaving traces on the institutions which they affected for centuries. The Carlo-

[1] Ecloge et Epicrisis eorum quæ a recentioribus criticis de Pseudoisidorianis Decretis statuta sunt (Migne's Patrolog. T. 130).

vingian Capitularies, which they distorted from their original tendency, were the recognized laws of the western and northern portions of the empire, until swallowed up by the all-pervading influence of feudalism, and even then they continued to be appealed to as an authority. As late as the close of the eleventh century they were cited in a suit between Centulla IV., of Bearn, and the Bishop of Lescar;[1] in 1208, Otho IV., at his election, took an oath with the princes of the empire, in which they mutually bound themselves to preserve intact all the laws of Charlemagne;[2] the Schwabenspiegel, which, from the thirteenth century, was the municipal code of Southern Germany, declares that all law is founded on the legislation of Charlemagne and of the popes,[3] and it is itself, to a considerable extent, based on the Third Book of the Capitularies; while some of the Capitularies, relating more particularly to ecclesiastical matters, being drafted into the collections of canon law, were perpetuated through Burkhardt, Ivo, and Gratian, during the whole mediæval period.

If the False Decretals thus indirectly left their impress on secular legislation, their overwhelming force in modifying the organization and position of the church itself may easily be conceived. The pretensions and privileges which they conferred on the hierarchy became the most dearly-prized and frequently-quoted portion of the canon law. In each struggle with the temporal authority it was the arsenal from which were drawn the most effective weapons, and after each struggle the sacerdotal combatants had higher vantage-ground for the ensuing conflict. The satire of Rabelais loses its usual extravagance when, dwelling upon the virtues of the "sacrosainctes

[1] Mazure et Hatoulet, Fors de Béarn, p. xxxviii.

[2] Ibi Rex primo, deinde cæteri principes jurant . . . omnia etiam jura a Karolo magno instituta observanda et tuenda.—Godefrid. S. Pantaleon. Annal. ann. 1208.

[3] Itaque nullum jus provinciale aut feudale subsistit aliter quam quatenus a clero Romano et ex Regis Caroli legibus derivatum est (Jur. Provin. Alaman. Introit. § 31).

Decretales"—the development and application of the forgeries of the eighth and ninth centuries—he exclaims: "Qui faict le sainct siege Apostolicque en Romme de tout temps et aujourd-huy tant redoutable en luniuers que il fault, ribon ribaine, que tous roys, empereurs, potentatz et seigneurs pendent de luy, tieignent de luy, par luy soyent couronnez, confirmez, authorisez, vieignent la boucquer et se prosterner a la mirifieque pantofle de laquelle auez veu le pourtraict? Belles Decretales de Dieu!" and when he undertook to describe "Comment par la vertus des Decretales est lor subtillement tyré de France en Romme," he only enlarged upon a theme which was long and keenly appreciated.[1] Nor did the humbler ballad-singer in his

[1] When, in 1583, President d'Espeisses, at that time Advocate General of France, drew up for Henry III. an argument against the reception of the Council of Trent, he dwelt upon the encroachments of the papal power, "dont s'est ensuivi les appellations en cour de Rome, les reservations, expectatives, préventions, bulles, annates, dispense, indulgence, et autres moyens de tirer les deniers de France, et presque la France même à Rome" (Le Plat Monumenta Concil. Trident. VII. 253). A century earlier, in 1457, the chancellor of the church of Mainz, in writing to a friend, a cardinal, complains that the highest benefices are openly sold by Rome, in contempt of elections at home, and that every means are used to extract money from the faithful. "Ecclesiarum regimina non magis merenti sed plus offerenti committuntur . . . Excogitantur mille modi quibus Romana sedes aurum ex nobis, tanquam ex barbaris, subtili extrahat ingenio."—(Von der Hardt Concil. Constant. T. I. P. v. p. 182). In 1372 we find the whole body of the clergy of Mainz binding themselves by a solemn agreement with each other not to pay a tithe levied upon them by the papal court, and complaining with more bitterness than respect of the exactions to which they were continually exposed—"et propter exactiones papales perplurimas in his terris clerici ad magnam pauperatem redacti. . . . Quod sedes ipsa, contra morem veterem sanctorum patrum, ad partes exteras nunquam his temporibus mittit predicatores vel viciorum correctores, sed cottidie mittit bene pompizantes, et facta sua proprie dirigentes, pecuniarum peritissimos exactores" (Gudeni Cod. Diplom. T. III. p. 509)—and at the same time Frederic, Archbishop of Cologne, promised his clergy to give them all the assistance he safely could in evading the tithe (Hartzheim Concil. German. T. IV. p. 510). About the year 1300 a writer whose official position gave him every opportunity of experience assures us that when any one in Christendom was accused of simony the common defence was to allege the example of the

rugged verse fail to seize the popular appreciation of the multiform evils arising from the same source—

> Depuis que decretz curent ales,
> El gens darmes portarent males,
> Moines allarent a cheval,
> En ce monde abunda tout mal.

Roman court; and he adds that when two claimants for a preferment referred their quarrel to Rome, the ordinary practice was to exhaust them with delays and expenses, and after the last penny had thus been extracted from them, to sell the benefice to a third party at the highest possible price (De Recuperatione Terræ Sanctæ cap. xvii.—Bongars, Gesta Dei per Francos II. 325). Half a century earlier, Robert Grosteste, Bishop of Lincoln, the most prominent ecclesiastic of the period in England, when lying on his death-bed did not hesitate to stigmatize the papal court as Antichrist, in consequence of the reckless injury to religion wrought by its insatiable avarice (Matt. Paris Hist. Angliæ ann. 1253). Not long before "Golias Episcopus" dwelt upon the same theme with a pertinacity which manifests the strength of the feeling of the time—

> "Romani capitulum habent in decretis
> Ut petentes audiant manibus repletis;
> Dabis, aut non dabitur, petunt quando petis:
> Qua mensura seminas et eadem metis."
> (Poems of Walter Mapes, p. 37 Ed. Camden Soc.)

And, earlier still, in the eleventh century, the implacable virtue of St. Peter Damiani exclaims, with indignant sorrow—

> "Heu Sedes Apostolica
> Orbis olim gloria,
> Nunc, proh dolor! efficeris
> Officina Simonis."—(Epist. ix. Lib. IV.)

That the money value of the papal authority was known and acted upon even in the Carlovingian period is well illustrated by the fact that when Lupus, Abbot of Ferrières, a man of high repute and consideration, was about to visit the Holy See on business, he begs his friends for presents to take with him, assuming as a matter of course that nothing could be effected in the papal court without them—"et quoniam in conficiendis rebus apostolici notitia indigebo, ea vero sine munerum intercessione inire commode non potest" (Lupi Ferrar. Epist. 68).

All the incidental prerogatives acquired by the Roman curia were thus turned into coin. Few popes have left a better reputation than Calixtus II., and yet the history, recorded by an eye-witness, of the negotiations for the elevation of Compostella to an archbishopric, reveals a cynicism of venality almost incredible. Diego Gelmirez, who sought this promotion

Even as Dante had expressed it more loftily two centuries before—

> —il maladetto fiore,
> Ch' ha disviate le pecore e gli agni,
> Perocche fatto ha lupo del pastore.
> Per questo l'Evangelio e i Dottor magni
> Son derelitti, e solo a i Decretali
> Si studia sì, che pare a'lor vivagni.
> A questo intende 'l Papa e i Cardinali:
> Non vanno i lor pensieri a Nazzarette.
>
> (Paradiso IX.)

for his see, opened negotiations by sending 200 ounces of gold taken from the tablets of his altars. This was stolen on the road, when he sent 100 more, of which only 50 reached its destination. He then forwarded a casket of gold weighing nine marcs and a large amount of coin to Calixtus, who had meanwhile succeeded to Gelasius II. His cautious envoy, finding Calixtus hesitate, only gave him 20 ounces and reserved the rest. Finally Calixtus acceded, on condition of receiving the reserved funds with 260 marcs of silver in addition. To obtain this, the church of Compostella was stripped of its ornaments, and to convey it safely it was confided to some ecclesiastics proceeding to the Crusade, each man receiving absolution of a year of penance for every ounce of gold that he should succeed in carrying safely. The money was duly paid, when Calixtus complained that his gold casket was partly silver, and demanded 20 ounces of gold to make it good; his chamberlain, moreover, declared that of 200 ounces of gold received one-fourth had proved to be base metal, so that the exhausted archbishop in expectation was obliged to furnish 70 ounces more. The narrator of this tissue of swindling simony relates it all with the utmost composure, as a matter of course, only interrupting his narrative occasionally to express his admiration of the virtues of the popes who thus sold their spiritual privileges, and of the archbishop who was so liberal in his bribes (Hist. Compostell. Lib. II. cap. 4, 6, 10, 16, 20). The naïve account given by Guibert de Nogent (De Vita Sua Lib. III. cap. 4), of the confirmation by Paschal II. of Gaudri's election to the see of Laon, in 1107, is an equally instructive illustration of the barefaced plundering and venality with which the papal court exploited the power it had obtained over the episcopal office. Perhaps the most significant illustration of the money value of the papacy, however, is the fact that among the documents connected with the proposed canonization of Henry VI., of England, towards the close of the fifteenth century, is a memorandum of the expenses connected with obtaining a place in the calendar of

Chancellor Gerson, of the University of Paris, one of the reputed authors of the Imitation of Christ, did not hesitate to assert that the papal authority was founded in fraud, and he found it necessary to argue at much length that the selling of benefices by the pope and other similar venality was as much tainted with simony as though the transactions had been perpetrated by offenders of lower rank.[1] Few churchmen, however, had the audacity to take so bold a stand, and it may be asserted, as a general proposition, that for eight centuries

saints, amounting in all to 783 ducats—the first item being a fee to the pope himself of 100 ducats! (Wilkins Concil. III. 639.)

Gerson does not hesitate to state (De Reform. Eccles. cap. xxiii.–iv.); that no bishop elect could be confirmed in Rome without payment, and that even if he had wherewith to meet the exactions of the papal court, there was always danger that he might be outbid by some one with more money. Even when a preferment had thus been sold to one man, it would be taken from him and resold to another. Among the reforms required at Constance he enumerates the abuses, or rather the violence, rapine, and extortion of the apostolic chamber, its pestiferous regulations, censures, excommunications, and deprivations (Ibid. cap. ult.). Cardinal Peter d'Ailly is equally emphatic. "Igitur qui non habent, aut habentes sed nolentes supra talibus pacisci, non possunt illic aliquod ecclesiasticum beneficium obtinere, ubi adhæc omnis justitia et caritas et misericordia sunt exclusæ." (Pet. de Alliaco de Necess. Reform. cap. viii.). . . . "Nam sicut est gaudium angelis Dei super uno peccatore penitentiam agente sic est gaudium in Romana curia de prælatis tunc cathedræ morientibus." (Ibid. cap. ix.) The same preferment would sometimes be sold to two or three aspirants, or benefices were sold which were not vacant, giving rise to the most intricate and disgraceful quarrels. (Ibid. cap. xxvii.)

[1] Gersoni Tract. de Reform. Eccles. cap. v.—Ejusd. de Simonia abolenda cap. iii. iv.—The popes had committed mortal sin in encroaching on the power and jurisdiction of the bishops.—De Reform. Eccles. cap. xvii.

In fact, the venality of the papal court was so uninterrupted that it finally became recognized as a right and gravely defended by the doctors of the canon law. According to the cardinals commissioned by Paul III. in 1538, to frame a project of reformation, it was argued that the pope was the legitimate possessor of all benefices, and that therefore he had an unquestioned right to sell them, and thus could never be guilty of simony. (Le Plat Monument. Trident. II. 596.) On one occasion this question was actually debated in the college of cardinals, and the next day Cardinal Cantarini felt himself obliged to address to Paul III. an elaborate argument to disprove it.—Le Plat loc. cit. p. 605.

the authority of Isidor and Ingilram was unquestioned, save by bold heresiarchs such as Marsiglio of Padua or Wickliffe, who had come to an open rupture with Rome ;[1] nor, when antiquarian research began to discover the anachronisms with which the forgeries were filled, did the church abandon her champions. The learning of Blondel, it is true, silenced his adversaries, whose only resource was to put his books into the Index,[2] but the Decretum Gratiani could not be mutilated, and the true and the false continued to appear in inextricable juxtaposition. It is not the least of the troubles of an infallible church that it cannot decently abandon any position once assumed. Having received the False Decretals as genuine, and having based upon them its claims to universal temporal supremacy, when it was obliged to abandon the defence of the forgeries it was placed in a shockingly false position. To have indorsed a lie, from the ninth to the eighteenth century, was bad enough, but to give up the fruits of that lie, so industriously turned to profitable account, was more than could be reasonably expected of human nature, and accordingly we have been authoritatively informed even within the last few years that the church claims still as its undoubted right all the power and prerogative that it ever enjoyed or exercised.[3] To maintain a position so extravagant it is requisite to prove that the teachings of the pseudo-Isidor are in accordance with the history and discipline of the primitive Apostolic church, and that they were in no way innovations on the order of things established at the time of their production. Intrepid controversialists

[1] Marsilii Patav. Defensoris Pacis P. II. cap. xxviii.—Among the Wickliffite errors condemned at the Council of Constance, was—"Decretales epistolæ sunt apocryphæ, et seducunt a fide Christi ; et clerici sunt stulti qui student eos."—Artic. Condam. Jo. Wickliff. No. 38 (Concil. Constant. S. V.).

[2] Decret. 4 Julii 1661.

[3] Among the damnable errors defined in the Syllabus of Dec. 1864, is that which teaches that "Romani pontifices et concilia œcumenica a limitibus suæ potestatis recesserunt, jura principum usurparunt" (Syllab. No. xxiii.).

have been found ready to defend even this desperate position.[1] They do so by attempting to prove that the pseudo-Isidor was not compiled until the year 850 or later, and that it was not known in Rome until long afterwards. The effort is then made to show, from the acts of Gregory IV., Leo IV., Nicholas I., and other pontiffs, that the same principles were in force at a time when the popes are assumed to be ignorant of the existence of Isidor, and that therefore the latter had no influence in establishing those principles. There are several gaps in this chain of argument, of which it will be sufficient to observe that it takes no cognizance of the fact that the canons of Ingilram existed in the eighth century; that the principles therein enunciated are nearly identical with those of the pseudo-Isidor; and that, as soon as the strong hand of Charlemagne lost its terrors, those principles became gradually prominent, to be fully invoked when the tumults of civil war were over.

To show how great was the revolution occurring about the period when the forgeries appeared, and how intimate was the connection between those forgeries and the changes which they were so well designed to create, will require a detailed examination into a few points relating to the mutual dependence of the secular and clerical power before and after the dissemination of the Isidorian doctrines. It will, I think, be found that the coincidence between the appearance of the forgeries and the change in the status of the church is so remarkable that the much-abused argument, *post hoc, propter hoc*, may fairly be applied to them as respectively cause and effect.

The lapse of a thousand years has well-nigh obliterated all traces of this revolution in the relative position of the secular and ecclesiastical powers. In the new order of things, the principles then established became the especial prerogative of the class which controlled all learning and education; and as

[1] D. Georg. Phillips (Kirchenrecht, 1851) assumes this, and draws from it the conclusion—"Pseudo-Isidoricam collectionem ingenuis juris fontibus indebite annumerari" (ap. Denziger).

those principles claimed obedience only as founded in divine law, and as in force from the earliest beginnings of Christianity, evidence of their novelty is not to be looked for on the surface of monkish chronicle or papal decretal. It is only by a somewhat minute investigation of laws and canons, and by a comparison of individually trivial details, that we can roughly trace the outlines of the struggle and see the origin of those theories of ecclesiastical superiority which left so profound an impress on the Middle Ages, and which have in no slight degree moulded our modern civilization.

I should add that two of the questions thus presenting themselves for investigation have required so much space for their consideration, that it has seemed best to detach them from the rest of the group, and discuss them in the form of separate essays on the immunity claimed by the clergy from secular jurisdiction, and on the use made by the church of its power of excommunication.

THE CHURCH AND THE STATE.

It has been indicated above that the Carlovingian polity, inheriting the traditions of the elder empire, rendered the church completely subordinate to the state. When, indeed, the monarch regulated the internal affairs of the ecclesiastical establishment, he was only exercising his undoubted prerogative. The kingly office conferred this authority even upon the Arianism of the Wisigothic kings, for the preface to the council of Agde in 506 declares it to be convened by the permission of Alaric II., and its first business was to offer up prayers in gratitude for allowing it to assemble.[1] The fresh Christianity of Clovis enjoyed similar power. An address to him by the

[1] Concil. Agathens. ann. 506, Præfat.

council of Orleans in 511 shows that he had convoked the prelates, that he presented to them the subjects for discussion, and that its canons required his confirmation to become authoritative.[1] One of these canons, moreover, prohibits the entrance into the church of any layman without the permission of the secular government.[2] The preface to the canons of another council, held at Orleans in 554, indicates in a similar manner the dependence of the church on the legislative function of the state.[3] A century later there was an attempt made to escape from this subjection, but it was promptly repressed by Sigebert II., who laid down the rule, in express terms, that no council should be held without his permission; and he consequently forbade the assembling of one which had been convoked, for the single reason that his assent had not been asked.[4]

Charlemagne, concentrating in his own person both the Roman and the Frankish traditions, issued his rescripts on ecclesiastical matters with fully as much authority as when legislating for concerns purely secular. Adelhard of Corbie, one of Louis le Débonnaire's chosen counsellors, has left us a description of the procedure customary at the assemblies of the Franks, by which we learn that the prelates and the nobles sat separately to debate the affairs appertaining specially to each class; that the capitularies or laws were submitted to them by the emperor for debate, but that the emperor finally decided for himself, according to the light thrown upon the subject. No difference, either in principle or practice, is therefore recognizable in the treatment of ecclesiastical and of secular affairs, and as both the initiative and the decision thus belonged to the sovereign, his power over both was limited only by the relations which chanced to exist at the moment between his subjects and himself.[5] Thus, throughout the whole body

[1] Epist. Synod. Aurel. I. ann. 511. [2] Ejusd. can. 4.

[3] Concil. Aurel. V. ann. 554, Prœm.

[4] Baluz. I. 101—"Ut sine nostra scientia concilium in regno nostro non agatur."

[5] Hincmari Instit. Reg. cap. 34, 35. Hincmar alludes to Adelhard as "inter primos consiliarios" of Louis

of the capitularies, political and clerical regulations are so intimately mingled that separation is almost impossible, showing that no thought of distinguishing them existed at the period, and that no doubt was entertained of the competency of the crown with regard to either.

We have already seen that the Roman pontiffs were the subjects of Charlemagne, submitting themselves without remonstrance to his jurisdiction. The church thus accepted his sovereignty, and it was exercised impartially over all ranks of the hierarchy. Alcuin exalts his power as superior in every respect to that of the pope and the Constantinopolitan emperors.[1] Paulinus, Archbishop of Aquileia, in an epistle to Charlemagne, exhorts him to a due and vigorous exercise of his authority over the internal affairs of the church as well as of the state, pointing out certain matters in the former as especially requiring his attention.[2] Even before his consecration as emperor, a prelate, whom we shall see hereafter complaining bitterly of the exercise of the imperial authority over his own person, had no scruple in declaring that the power of Peter was confined to Heaven and that the church militant on earth was subjected exclusively to the control of the King of the Franks.

> Cœli habet hic claves, proprias te jussit habere,
> Tu regis ecclesiæ, nam regit ille poli ;
> Tu regis ejus opes, clerum, populumque gubernas
> Hic te cœlicolas ducet ad usque choros.[3]

Even the assembled wisdom of the church did not consider that the divine guidance would emancipate it from the imperial control, and the proceedings of synods were submitted as humbly to Charlemagne as those of the earlier councils to the successors of Constantine. The council of Arles, in 813, respect-

[1] Alcuini Epist. 4 (Canisii Thesaur. II. 392)—"cæteris præfatis dignitatibus potentia excellentiorem, sapientia clariorem, regni dignitate sublimiorem."

[2] Baluz. et Mansi Miscell. II. 11.

[3] Theodulf. Aurelians. Carm. Lib. II. No. vi.

fully sent to him its series of canons with a humble request that he would add what might be wanting, alter what he should disapprove, and ratify what met his views.[1] Nor was this confined simply to questions of discipline, for matters of faith and doctrine were acknowledged to be equally under his control. The decisions of the council of Frankfort in 794 did not acquire legal force until a capitulary, issued in the sole name of the monarch, defined the exact amount of veneration with which images were to be regarded.[2] Perhaps, however, the most remarkable instance of his spiritual authority is to be found in the manner in which he forced upon the church the well-known alteration in the Nicene creed, which placed Rome at so much disadvantage in its contests with Constantinople.

The Nicene symbol, as modified by the First General Council of Constantinople and confirmed by that of Chalcedon, described the Holy Ghost as proceeding from the Father. When the Spanish Wisigoths were converted from Arianism, by some accident or oversight the confession of faith which they adopted ascribed the procession of the Holy Ghost to the Son as well as to the Father.[3] Thus altered, the symbol gradually spread from Spain into France, and when Charlemagne took exception to the proceedings of the Second General Council of Nicæa concerning image worship, he also complained that the faith had been vitiated by not adopting the Frankish creed in this respect.[4] Adrian I., in his answer to Charlemagne, con-

[1] Concil. Arclatens. VI. ann. 813. (Harduin. IV. 1006.)

[2] Carol. Mag. Rescript. de non adorandis imaginibus (Goldast. Const. Imp. II. 2).

[3] Concil. Toletan. III. ann. 589; IV. ann. 633 (Harduin. III. 469, 579).

[4] Lib. Carolin. Lib. III. cap. i., iii.—At the Nicene council, the Patriarch Tarasius, in defining the faith, had admitted that the Holy Ghost proceeded from the Father by the Son (Concil. Œcum. VII. Act. iii.—Harduin. IV. 131). Charlemagne insisted that it should be from the Father and the Son. The council, in fact, only formally repeated the Constantinopolitan symbol, which omits all mention of the Son (Act. vii. Ibid. p. 453-4)—το ἐκ του πατρος ἐκπορευομενον—but the Latin versions have "qui ex Patre

tented himself with proving from the fathers that the council was right and the Frankish creed wrong.[1] Charlemagne did not yield, and in 809 caused the matter to be taken up by the council of Aix-la-Chapelle, which insisted that the addition of "filioque" to the creed, as chanted in the French churches, was the only Catholic doctrine,[2] and Charlemagne dispatched envoys to argue the matter with Leo III., sending also a letter in which he insisted on the correctness of his faith in this respect. Leo was too completely under the imperial domination to contest the point. He admitted that to believe in the procession of the Holy Ghost from both Father and Son was requisite for salvation; but, mindful of the anathema launched by the council of Chalcedon against all who should impiously deem the Constantinopolitan symbol insufficient and dare to change it,[3] he refused to authorize the insertion of the words in the creed, while, after considerable pressure, he agreed that they might be taught and chanted—an unintelligible compromise with his conscience, elucidated, perhaps, by his action in having the unadulterated creed engraved on silver, in both Greek and Latin, and hung at the portal of the basilica of St. Peter.[4] Charlemagne triumphed. His form of the creed was publicly recited in the daily service of the church throughout the empire, was finally adopted by Rome itself, and, notwithstanding that it was the leading ostensible cause of the schism between the Eastern and Western churches, has been adhered to with the tenacity inseparable from infallibility.[5]

Louis le Débonnaire, notwithstanding his veneration for the

Filioque procedit" (Ibid. pp. 454, 747). Hardouin, while giving this interpolated version, frankly admits that it is not so in the MSS., and that the only authority for it is the assertion of Cardinal Julian at the Council of Florence (where this point was fiercely argued between the Greeks and Latins) that he had seen an old MS. with this reading (Ibid. p. 454).

[1] Hadriani PP. I. Epist. 52 (Ibid. p. 775).

[2] Hartzheim Concil. German. I. 390–1.

[3] Concil. Chalced. Act. v. (Harduin. II. 454–5.)

[4] Hartzheim I. 391–6.—Harduin. IV. 970 sqq.

[5] Concil. Trident. Sess. III. Decret. de Symbol. Fidei.

church, considered himself to be its head and ruler in no less degree than had Charlemagne. One of his edicts addressed to the bishops assumes their episcopal authority to be derived from him, and that he is personally responsible for their proper exercise of it.[1] When his pious zeal assembled the council of Aix-la-Chapelle in 816, to reform the corruptions of the church, the stringent canons drawn up to meet his wishes were promulgated under his authority; his commands enforced obedience to them, and any infraction of them was punishable by him.[2] In 828, when he ordered four councils of his bishops to be held in various parts of his dominions to consult upon ecclesiastical matters, he instructed them that the results of their deliberations should be recorded by sworn notaries, and not be divulged until the proper time, evidently because, as he was unable to be present, he did not wish them made public until he should sanction them authoritatively; and at the same time he gave his *Missi Dominici* stringent orders to examine into the lives of the bishops and clergy, and report to him how they discharged their functions and fulfilled their duties.[3] An Imperial Diet, indeed, boldly affirmed that the emperor's power over the church was superior to that of the pope himself.[4]

Even after the civil war, as late as 845, the bishops of the synod of Thionville addressed Lothair, Louis, and Charles, entreating them to remove the corruptions of the church, for the governance of which they were responsible to God.[5] The tottering power of young Charles le Chauve still required that the canons of synods, relating solely to church affairs, should be submitted to him for confirmation, even as the *sanctio* of the

[1] Capit. Ludov. Pii ann. 823 cap. 3, 4. Cf. Capitul. Lib. VI. c. 432.

[2] Miræi Cod. Donat. Piar. c. 13.

[3] Capit. Ludov. Pii ann. 828.

[4] Imperialem majestatem plus posse in administranda ecclesia quam pontificiam.—Goldast. I. 188.

[5] Si . . . . ab hac eadem ecclesia, vobis ad gubernandum commissa, pro qua ex ministerio regali reddituri estis Regi Regum rationem in die judicii, tam multiplices ac perniciosas corruptionis pestilentias vultis amovere (Capit. Carol, Calvi Tit. II, cap. 1).

Roman and Greek Emperors had been requisite to give effect to the *dispositio* of the earlier councils. This was not an empty show of unmeaning deference, for on one occasion we find him annulling many of them with his simple veto;[1] and in 847, the Council of Mainz, in appealing to Louis le Germanique for the confirmation of its canons, employs terms which show that without it they had little prospect of obedience.[2] The successor of St. Peter, himself, had not yet thought of escaping from temporal jurisdiction, for in the same year we find Leo IV. promising implicit obedience to the laws of the Emperor Lothair and of his predecessors.[3]

Ingilram and Isidor, however, taught a doctrine very different from this; and, when the time was ripe, their authority was duly brought forward to prevent all further interference of royalty with sacerdotal legislation. As early as 833, when Gregory IV. was summoned from Italy by the sons of Louis to render their father's degradation complete, and the pope could scarcely nerve himself to the awful task, Wala, Abbot of Corbie, the fierce promoter of the rebellion, endeavored to strengthen his wavering resolution by producing a collection of papal decretals proving that the Vicegerent of Christ was empowered to judge mankind, and was not to be judged of men.[4] Gregory was delighted at thus finding himself pos-

[1] Capit. Carol. Calv. Tit. VII. The previous year the synod of Verneuil had suggested various laws respecting ecclesiastical matters to Charles, entreating their enactment (Baluz. II. 13–20).

[2] Concil. Mogunt. ann. 847 can. XXXI. (Hartzheim II. 160).

[3] De capitulis . . . vestris . . . irrefragabiliter custodiendis ac conservandis quantum valuimus et valemus, Christi propitio, et nunc et in ævum, nos conservaturos modis omnibus profitemur (Gratian. Decret. Dist. X. can. 9).

[4] Paschasii Radberti de Vit. Walæ Lib. II. cap. 16. The terms in which Paschasius recounts this, and the comfort which these hitherto unknown decretals gave to the shrinking pope, leave little doubt that they were the forgeries of Isidor. After describing Gregory's alarm at the threats of Louis's bishops, he proceeds—"Unde et ei dedimus nonnulla sanctorum patrum auctoritate firmata, prædecessorumquè suorum conscripta, quibus nullus contradicere possit quod . . . in eo esset omnis auctoritas

sessed of powers hitherto unknown to the papal canonists, and was ready enough to declare that the pontifical power was superior to the imperial;[1] but the son of Charlemagne, even in his adversity, was heir to too much traditional veneration for such doctrines to obtain general currency. Gregory, in spite of his new-found prerogatives, returned to Rome amid unseemly derision,[2] and his pretensions remained practically in abeyance until those who had provoked them were ready to be their victims. In 845 appeared the Capitularies of Benedict the Levite. This compilation purports to contain the Carlovingian legislation digested in an accessible form, and was for the most part extracted from the collections of Riculfus of Mainz, the sponsor for the Isidorian canons. The work of Benedict contains a large body of genuine laws, thickly interspersed with extracts from the new suppositious documents—principally from the canons of Ingilram, though Isidor likewise furnishes a considerable number. The object of the whole is so evidently to give currency to the new doctrines that some critics have been led to the conclusion that Benedict must also have been the real author of the False Decretals.[3] These Capitularies were unquestionably received and used as authoritative, and such customs as they did not simply record they assuredly did much to introduce and strengthen. In them the principle is distinctly and repeatedly declared that the imperial legislation is subordinate to the sacerdotal, and that in any conflict between them the former must give way. Laws contrary to the decretals of the popes or of other prelates are asserted to be

beati Petri excellens et potestas viva, a quo oporteret universos judicari, ita ut ipse a nemine judicandus esset."

[1] Gregor. PP. IV. Epist. de Compar. Regim. (Migne's Patrolog. T. 104, p. 299.) He admitted, however, that he himself was subject to trial and judgment.

[2] Hincmari Epist. XXVII.

[3] Knust is of this opinion, and Denziger labors hard to establish it. Of Benedict's Capitularies, 57, being about five per cent. of the whole, are Isidorian.

null and void;[1] the anathema is pronounced against any sovereign who sets aside the canons;[2] and on the authority of Pius I., an humble Roman bishop of the second century, the broad assertion is made that the imperial law is to be controlled by the divine law—a postulate capable of indefinite extension.[3] That these were not merely assertions of a theoretical principle, but that they were generally enforced and practically admitted, will be manifest from various transactions alluded to hereafter, which show how completely the supremacy of royalty was set aside and the superiority of the spiritual jurisdiction became established.

The recognition of the immunity of the ecclesiastical body from all liability to the secular tribunals was one of the principal incidents in this revolution. It forms so curious an episode in the history of legislation, that its proper consideration would carry us too far from our present subject, and it, therefore, is treated in a subsequent essay more at length than would be suitable here. Suffice it, therefore, for the present, to say that, in defiance of all precedent, the clergy successfully emancipated themselves from the jurisdiction of the secular power, and established the principle that an ecclesiastic could only be tried by ecclesiastics and be judged by ecclesiastical law. Not content even with this, an attempt was made to establish

[1] Capitul. Lib. VII. c. 346 (Ingilram. can. 39; Gratian. Dist. IX. can. 4).

[2] Capitul. Lib. VI. c. 322 (Ingilram. can. 80; Gratian. caus. 25, q. 1, can. 11).

[3] Capitul. Add. III. c. 17 (Gratian. Dist. X. can. 1). The application of these principles can be traced with great clearness in Iceland, which was converted after they had become firmly established. In 1053, within less than half a century after the establishment of Christianity, the sacerdotal power was already strong enough to procure an enactment that whenever the popular laws conflicted with the ecclesiastical, the former must give way (Schlegel, Comment. in Grágás, p. xxiii.). This would seem even to be a superfluous precaution in view of the fact that in the Lögretto, or central high court, when any difference was found to exist in the copies of the code in the hands of the judges, those in possession of the bishops were held to present the authentic text (Grágás, Sect. II.).

the superiority of the church in another manner by claiming for it inviolable sanctity, so that the humblest clerk could not even be accused by a layman. This principle was too monstrous to be successful even in that age of ignorance, and the canons which express it in the most unqualified manner are mingled with others whose careful enumeration of the causes of incompetency in witnesses shows that the more general regulations were rejected by the common sense of mankind.

Bishops were especially the objects of this tender precaution. As early as the fourth century a council of Carthage had forbidden the reception of accusations against bishops on the part of disreputable persons, and the council of Chalcedon had repeated the prohibition.[1] At that period such legislation only affected the internal regulations of the church; but when the principle was interpolated in the laws of Charlemagne, it assumed a vastly wider significance, and became applicable to temporal as well as to spiritual matters.[2] It is true that the episcopal dignity had been protected from false accusations by a constitution of Valentinian III. in 439, imposing a fine of thirty pounds of gold as a penalty for such transgressions;[3] but this severity was not imitated by the barbarians, and the church could only defend itself by threatening excommunication in such cases, without appealing for aid to the secular power.[4] Ingilram, Isidor, and their followers, however, took much higher ground. St. Clement was made to assert that Christ had forbidden laymen from accusing their pastors.[5] Evaristus, a pope of the first century, was authority for the declaration that no bishop could be accused by the common

[1] Concil. Carthag. III. c. 7.—Concil. Chalced. can. 21.

[2] Capit. Carol. Mag. I. ann. 789 §§ 29, 34; Capit. ann. 794 § 34.

[3] Const. 23 Cod. I. 3.

[4] Concil. Agathens. ann. 506 c. 32.

[5] Sed et laicos ab eorum accusatione et vexatione semper repellere debere rogabat, et cunctos sibi subditos esse præcipiebat. . . . Majores vero a minoribus nec accusari nec judicari ullatenus posse dicebat.—Pseudo-Clement. Epist. 1.

people.[1] Pius I. was cited to show that the sheep shall not reprove their pastor, nor the people accuse their bishop, for the disciple is not above his master nor the slave above his lord.[2] Calixtus I. was made responsible for the rule that no accusations against prelates were to be entertained, for children are not to reprove their fathers nor are slaves to attack their lords;[3] and St. Cornelius was quoted to show that such accusations were null, and were therefore harmless to the accused.[4] This constant repetition proves the importance attached to the principle, and the persistent efforts made to obtain its recognition, not only as applicable to prelates, but to the whole body of the clergy. Clerical peccadilloes were declared to be objects of toleration and not of punishment,[5] and a canon was adopted from Ingilram and Isidor which shielded priests from all accusations brought by those whose virtue and orthodoxy were not known and approved.[6] Even this was not enough, and Ingilram produced a canon declaring as a general principle that the evidence of a layman against an ecclesiastic was never to be received;[7] while Isidor quoted the supposititious proceed-

[1] Non est a plebe vel a vulgaribus hominibus arguendus vel accusandus episcopus, licet sit inordinatus.—Pseudo-Evarist. Epist. 1 (Gratian. Caus. II. q. 5 can. 1).

[2] Oves pastorem suum non reprehendant, plebs episcopum non accuset, nec vulgus eum arguat, quoniam non est discipulus super magistrum, neque servus supra dominum.—Pseudo-Pii Epist. 1 (Gratian. Caus. VI. q. 1 can. 9).

[3] Criminationes contra doctorem nemo suscipiat, quia non oportet filios patres reprehendere, nec servos dominos lacerare.—Pseudo-Calixt. Epist. 1 (Ivon. Decret. P. v. cap. 234. Cf. Capitul. Lib. VI. c. 357; Lib. V. c. 315).

[4] Quoniam tales accusationes vim non habent, neque eis nocere possunt. Pseudo-Cornel. Epist. 2.

[5] Pastor ecclesiæ . . . pro reprobis moribus magis est tolerandus quam distringendus.—Pseudo-Anaclet. Epist. 5 (Remig. Curiens. Episc. can. 17).

[6] Quorum fides, vita, et libertas nescitur non possunt sacerdotes accusare.—Ingilram. c. 16; Pseudo-Calixt. Epist. 2; Pseudo-Fabian. Epist. 2 (Capitul. Lib. VI. cap. 359).

[7] Testimonium laici adversus clericum nemo suscipiat.—Ingilram. can. 73.

ings of a council said to have been held in Rome under Sylvester I., in 325, which repeated the canon of Ingilram, with the addition that no layman should bring a charge against a clerk.[1] The former of these was formally promulgated as a rule of the church by the council of Mainz in 847;[2] while the latter is adopted in a law attributed to Louis le Débonnaire in the Lombard code, with a change which denied to clerks the power of accusing laymen—thus separating the two classes entirely, and placing them upon equal ground.[3] Impolitic as this might be, it was at all events fair, and it accorded with another passage in the forgeries,[4] but though it subsequently became recognized to some extent, owing to the influence of the Isidorian decretals,[5] yet the clergy were not prepared to surrender the power which they were rapidly acquiring over the laity by the extension of their jurisdiction. The Carlovingian policy employed them as an efficient instrument of civilization, and to deprive them of the right to accuse would have been to deprive them of much of their influence. The council of Mainz, in 813, made it the duty of every priest, under penalty of degradation, to see that the misdeeds of his parishioners were duly punished;[6] and that this power was enlarged rather than restricted will be seen presently when we come to consider the jurisdiction of the church.

[1] Constitutum est ut nullus laicus crimen clerico audeat inferre . . . testimonium laici adversus clericum nemo recipiat.—Pseudo-Sylvester. Cf. Pseudo-Marcellin. Epist. 3.

[2] Concil. Mogunt. ann. 847 can. 7.—This was, however, unsuccessful, for another council of Mainz, a few years later, expressly admits secular accusers.—Concil. Mogunt. ann. 851 can. 8.

[3] Ll. Longob. Ludov. Pii iv. (Lib. ii. Tit. 51 l. 12.)

[4] Pseudo-Fabian. Epist. 2. See also the earlier forgery of the Roman council under Sylvester, can. xiv. (Migne's Patrol. VIII. 840), which is held by critics to have been fabricated in the sixth century.

[5] Gratian. Caus. 2 q. 7 can. 6.—In the twelfth century, Alexander III. laid this down as a general rule (Jaffé, Regest. p. 813); and it seems to have been in full vigor in the Scottish law of the fourteenth century. "Approbatione, acquietatione, et testimonio repelluntur . . . clerici contra laicos et e converso."—Roberti I. Scot. Stat. ii. cap. 34.

[6] Concil. Mogunt. ann. 813 can. 7.

The inviolability thus claimed for the clerical office was not left entirely to theoretical declarations of principle. Charlemagne had been induced to adopt one of the canons of the fabricated council of Rome under Sylvester, according to which it was decreed that for the conviction of a bishop the testimony of seventy-two witnesses was requisite, while forty-four were necessary in the case of a priest, thirty-seven in that of a cardinal deacon, and seven for a sub-deacon—all to be heads of families and professing Christians.[1] Louis le Débonnaire issued a capitulary by which any one offering insult or injury to a prelate was forced to compound for his life, all his property was confiscated to the church, and in addition he was to pay to the king the heavy fine of a triple "bannum," or sixty solidi, with the proviso that if unable to make the payment, he became a slave of the fisc until he could do so—which was probably for life.[2] Benedict the Levite went even further. According to him, the accusation of a bishop was an accusation of the ordinance of God, and the calumniator of his bishop was a homicide, to be dealt with accordingly.[3] These claims were too exaggerated to be fully admitted, though they left their impress in some degree upon the institutions of the middle ages.[4] It was fortunate, indeed, for the church,

[1] Capit. Carol. Mag. VI. ann. 806 § 23.—Concil. Roman. sub. Sylvest. can. iii. (Migne VIII. 833). Ingilram. can. 72; Pseudo-Sylvester—though the numbers of the witnesses are not precisely the same. A variation of this regulation occurs among the fragments attributed to Theodore, Archbishop of Canterbury, towards the close of the seventh century (Thorpe, Ant. Laws, etc., of England, II. 73).

[2] Capit. Ingelenheim. Ludov. Pii cap. 3.—I believe the authenticity of this capitulary has never been called in question, and yet the whole of its provisions are so extravagantly in favor of the church that I am inclined to regard it as supposititious, or at least interpolated.

[3] Capitul. Lib. VII. cap. 167, 203.

[4] In the tenth century, Atto of Vercelli, on the authority of the False Decretals, asserts for the clergy as a right the immunity from secular accusation (De Pressuris Eccles. P. I.); and St. Stephen of Hungary adopted the principle as an absolute rule in his laws—"Testimonium laici adversus clericum nemo recipiat."—Legg. S. Steph. Hung. cap. iii.

that they had not all the success desired by their authors. The immunity acquired from secular jurisdiction was an efficient cause of the all-pervading corruption which eventually infected the church, and had it been accompanied with immunity from secular accusation, the sacerdotal body, thus elevated into a supreme and inaccessible caste, would have become so pestilential that religion itself might have perished under the infliction, and the progress of civilization might have been indefinitely postponed.

While thus throwing off all subjection to the judicial authority of the state, the church was making rapid progress in acquiring an important share in the general administration of justice. The functions of the judge are among the most potent sources of influence, and a class that can arrogate to itself, as a class-privilege, the right to administer the law, has thereby secured to itself no small portion of the government of the body politic. To combine this source of power with the ministrations of religion, was to control the life, here and hereafter, of every man—a prize worth striving for, and for which the ecclesiastics possessed a favorable base of operations. In the early days of Christianity, the church was a society of voluntary cohesion, purified to a considerable extent of worldly and unruly elements by the fires of occasional persecution. Even without the exhortations of St. Paul and the reproof administered by him to those whose litigious propensities brought them before heathen judges (1 *Corinth.* vi.), the law of Christian love would naturally lead all members to refer questions arising among themselves to the friendly arbitration of the elders or bishops, and the prevalence of this custom is shown by its continuance into the fifth century.[1] How perfectly natural was this rule at its origin, in a society holding itself aloof from the institutions among which it was placed, is manifested by the

[1] Constit. Apostol. Lib. II. cap. 49, 50.—Concil. Carthag. III. ann. 397 can. 9.—Concil. Chalced. can. 9.

existence of a similar regulation among the Jews of the Dispersion as well as among the French Huguenots of the sixteenth century;[1] and as long as the church was thus isolated and kept pure, there was little risk that any one would incur the infamy of rejecting the decision of such an arbiter. When, however, the despised and oppressed sect grew rich and powerful, and when, at length, dominant in the empire, it became the channel through which avarice and ambition might gratify their desires, the necessity arose of either abandoning the custom or of giving legal validity to the episcopal judgments. Accordingly, a law of Arcadius and Honorius, in 398, declares that those who desire to refer civil suits to the arbitration of bishops shall not be prevented from doing so; and another, in 408, renders final the decisions in such cases, and directs the civil officials to execute them.[2] It will be observed that these regulations refer exclusively to powers of arbitration conferred by the consent of both parties; and when a prelate enjoyed a reputation for sagacity and piety, this arbitrative function was extensively called into action. The complaints of St. Augustine are well known, that pleaders came before him in such numbers as sadly to interfere with his legitimate spiritual duties, and yet he had done his share in bringing about this state of things, for he taught that litigation between Christians was a sin, pardonable only on condition of being urged before an ecclesiastical judge.[3] His contemporary, Synesius, was no less harassed with the worldly character of the occupations in which he thus found himself involved. Forced unwillingly to accept the bishopric of Ptolemais, he inveighed particularly against the judicial functions fastened upon him, which he regarded as altogether incompatible with the religious duties of his position, and he requested permission either to resign or to have a coadjutor more fitted for the management of civil affairs, a ma-

[1] Chiarini, Talmud Babli, II. 12.—Synod of Saumur, ann. 1596, chap. IV. Art. 35 (Quick, Synodicon in Gallia Reformata).

[2] Const. 7, 8. Cod. I. 4.

[3] Augustin. Serm. CCCLI. § 5.

gistrate, apparently, being more wanted than a priest.[1] St. Martin of Tours, not long before, had found an expedient for escaping, partially, at least, these interruptions of his pious meditations, for, until he had celebrated mass each day, he kept himself secluded, and delegated to his attendant priests the office of deciding such affairs.[2] Silvanus, Bishop of the Troad, a contemporary of Synesius and St. Augustine, adopted the same system; but he soon found that his priests were gaining filthy lucre from the judicial powers thus delegated to them, and he won much credit by substituting for them a layman of approved character and experience, whose decisions gave general satisfaction.[3] It is evident, therefore, that the custom was widely prevalent.

All prelates, however, were not so disinterested as Silvanus, and it is manifest from his case that money was to be made by abusing the public confidence thus reposed in the episcopal character. That power and influence were likewise to be acquired is self-evident, and it is scarcely to be supposed that the temptation was always resisted. Efforts, indeed, were constantly made to convert this friendly jurisdiction into a legal attribute, for Valentinian III., in 452, found it necessary to put a stop to the discussion of the subject by a constitution which expressly declared that bishops could only exercise judicial functions with consent of both parties;[4] and Honorius had already felt called upon to prevent the prelates from trespassing on the functions of the courts by a law declaring that they had cognizance of religious matters only, all secular actions belonging to the civil tribunals.[5] Special cases, it is true, were occasionally referred to them by command of the monarch;[6] and Justinian conferred on them a certain amount of supervisory power. They were instructed to visit the prisons weekly

[1] Synesii Epist. 57. [2] Sulpic. Sever. Dial. II.
[3] Socrat. Hist. Eccles. Lib. VII. cap. 36.
[4] Novell. Valentin. III. Tit. 35.
[5] Lib. XVI. Cod. Theod. Tit. 11, l. 1. Cf. Tit. 2, l. 23.
[6] Theodorici Const. 67 (Goldast. III. 49). Novell. 123 c. 21.

to see that the prisoners were not harshly treated, and when interference was necessary they were instructed to report the matter to the emperor.[1] When unreasonable delay occurred, the plaintiff in a suit could appeal to his bishop, who might summon the judge to render speedy justice; if the pleader feared partiality he could demand that the bishop should have a seat on the bench; if dissatisfied with a judgment he could appeal to the bishop, who then heard the case as between judge and plaintiff, and could condemn the former to make good any damage unjustly inflicted on the latter, subject to an appeal to the emperor.[2]

This power, though not inconsiderable, was exceedingly limited in its range, but the Western Barbarians were much more ready to foster the judicial functions of the church; and the alacrity with which this disposition was welcomed is shown in the commands of an early Irish council to bring all disputes for settlement to the church, under penalty of expulsion.[3] It is easy to understand the causes which favored this extension of power. The rude and imperfect ancestral codes of the Barbarians of course became rapidly unsuited to the wants of the possessors of the fairest provinces of Rome, creating the desire for a more complex system of law; and as every man was entitled to be judged by the customs of his race, there must have arisen a confusion of jurisprudence embarrassing in the highest degree to the honest, but untutored *rachinborg*. The impatient Frank, when engaged in litigation with a Roman, might disdain to submit to the jurisdiction of a judge of the conquered race, and might well prefer to lay his case before a bishop whom he regarded with deserved respect; while, on the other hand, the Roman, in a quarrel with a Barbarian, would likewise desire the sentence of a judge whose decrees might command obedience when those of a compatriot might be received with undisguised contempt. We can thus

[1] Const. 22 Cod. I. 4.
[2] Novell. 86 cap. 1, 2, 4.
[3] S. Patric. Synod. I. ann. 456 can. 21.

readily understand the creation of an important voluntary jurisdiction, of which the extent can be gathered from the canons of the council of Tarragona as early as 516, forbidding the clergy from hearing causes on Sundays, or from entertaining criminal actions, though permitting them at other times to dispense justice in civil cases with the consent of parties;[1] while the eleventh council of Toledo, in 675, found it necessary to threaten deposition and perpetual excommunication against all ecclesiastics concerned in rendering sentences of death or mutilation[2]—a caution found also in the English canons of the eighth century.[3] The Wisigoths, indeed, were disposed to clothe their bishops with very extended jurisdiction, copied with additions from the legislation of Justinian and freed from the check of the supervision of the sovereign. The laws of Ricaswind, for instance, empower a plaintiff, who suspects his judge of partiality, to demand the association of a bishop with him on the bench; when bishops were selected as arbitrators their verdicts were rendered binding, and the court that refused to execute them was visited with a heavy fine; and, finally, they were authorized to reverse all unjust decisions, either with or without the consent of the judge.[4] There is little

[1] Concil. Tarracon. ann. 516 can. 4. [2] Concil. Toletan. XI. can. 6.

[3] Egberti Excerpt. cap. 156.

[4] Ll. Wisigoth. Lib. II. Tit. 1, ll. 23, 29, 30. The first and third of these laws, by far the most important in the power conferred by them, are retained in the Fuero Juzgo (Lib. II. Tit. 1, ll. 22, 28), showing how thoroughly the power of the bishops survived the overthrow of the Gothic monarchy. Yet under the influence of the revival of the Roman law, the judicial power of the clergy declined there as elsewhere. The code framed in the thirteenth century by Alphonso the Wise gives the bishops only an admonitory power over the judges, and orders them to report to the king all unjust decisions (Las Siete Partidas, P. I. Tit. 6, l. 48). The same law forbids ecclesiastics to preside in the adjudication of secular cases, "porque seria vergüenza de se entremeter del fuero de los legos los que señaladiemente son dados para servicio de Dios"—except in certain matters, the careful enumeration of which reveals considerable jealousy of clerical encroachments. This, perhaps, was essential when even monks assumed judicial functions, and it became necessary to prohibit such violation of their vows (Ibid. P. III. Tit. 4, l. 4). That this was not uncalled

evidence, however, that these vast prerogatives, which trenched so closely on the royal power, had much practical effect in an age of turbulent anarchy, though the reverence of legislators might leave them a place on the statute-book. That they were an innovation on the ancestral customs of the race is shown by the canons of the fourth council of Toledo in 633, not long previous, in which the supervisory power of the bishops is limited to the right of reporting to the king all arbitrary perversions of justice; though another canon of the same council attributes to the yearly provincial councils the duty of hearing complaints against magistrates and men in power, both ecclesiastical and secular.[1]

In France the same tendency to rely upon the church to correct the abuses of the secular courts is seen in an edict of Clotair I. in 560, which directs that in the absence of the king the bishops shall reprove the judges for any unjust sentences, in order that on further investigation the wrong may be made right.[2] This, if generally enforced, must have given to the church a very extensive appellate jurisdiction, which could readily be made the instrument of immense influence; but that the stricter churchmen regarded the exercise of judicial functions as incompatible with the ecclesiastical character is shown by Geogory of Tours, who reproaches Badegesilus, the unclerical bishop of Le Mans, with sitting as associate judge in secular tribunals—evidently considering such proceedings to be as irregular as the military exploits of that rapacious prelate.[3]

for is shown by its retention in the Ordenamiento de Alcalâ, a subsequent body of law remaining in force until the latter half of the fifteenth century.

[1] Concil. Toletan. IV. can. 31, 3.

[2] Const. Chlot. ann. 560 § 6.

[3] Greg. Turon. Hist. Lib. VIII. cap. 39. The Welsh law also pronounced ecclesiastics incapable of acting as judges (Dimetian Code, Bk. II. Chap. viii. § 128). How thoroughly the views of the church in regard to this became altered in the course of time, and how completely the opposite principle became engrafted on the institutions of Christendom, are well illustrated by the long line of ecclesiastical chancellors of England, extending from the Saxon period beyond the Reformation, and even into the

About this time we also find the church laying hold of an extensive sphere of jurisdiction, which could not but prove greatly conducive to the enlargement of its power and influence. Its duties of charity and benevolence rendered it naturally the protector of the unprotected. The widow, the orphan, the freedman, who had no other friend, would look to the minister of Christ for the assistance to be vainly expected elsewhere in a busy and turbulent world, and the church would be false to its teachings if it neglected the cry of the oppressed and friendless. Accordingly, we find Gregory the Great instructing his legates and bishops to see that justice was done to these classes of society, in a manner which shows that he must have been frequently appealed to, and that throughout Italy and the Islands an extensive ecclesiastical jurisdiction was springing up in civil suits of this nature.[1] The same process was developing itself even more rapidly in France, for, in 585, the second council of Macon was able to express as a received principle of jurisprudence that, in suits involving the right of freedmen, secular judges had no jurisdiction, and that where orphans and widows were concerned the judge must give notice to the bishop, who should himself sit, or send a deputy to preside along with the civil magistrate.[2]

All this passed away in the anarchy which accompanied the downfall of the Merovingians, and was sedulously avoided in

seventeenth century in the person of Bishop Williams. A relic of it, indeed, is still seen in the strangely incongruous functions of the Anglican bishops as members of the House of Lords—the High Court of Justice of the realm. I may add that the earliest Icelandic code extant, the Grágás, compiled about 1118, nearly a century after the conversion of the island, shows the bishops as a portion, *ex officio*, of the Lögretto, or chief central court (Grágás, Sect. II.), besides which they had a limited jurisdiction in their respective districts (Ibid. Sect. v. Tit. 31). In France this extension of ecclesiastical functions was checked by Philippe le Bel, who declared clerks to be incapable of acting as judges for the very good and sufficient reason that the immunity enjoyed by them rendered them irresponsible for abuse of power (Les Olim, T. II. p. 269).

[1] Gregor. PP. I. Lib. I. Epist. 13, 61, 62, 63; Lib. III. Epist. 5.

[2] Concil. Matiscon II. ann. 585 can. 7, 12.

the Carlovingian reconstruction. Any traces, indeed, that might have remained must soon have been destroyed by the system of *Missi Dominici*, which formed so prominent a feature of the civilizing and centralizing institutions of Charlemagne. Any secular jurisdiction remaining to the bishops must have been limited solely to friendly arbitration; and even this the intelligent jealousy of the emperors was desirous of abolishing, for there is a capitulary forbidding any one to select ecclesiastical judges when there was a secular tribunal accessible, even if both parties consented.[1] It is true that Charlemagne in 813 directed the bishops to inquire, in their diocesan visitations, into all crimes committed within their boundaries, but he was careful not to accompany this with any authority for trial or punishment.[2] The only judicial power, therefore, remaining was that which frequently attached to territorial possessions, by which the vassal, whether layman or ecclesiastic, had the privilege of administering justice within his own domains.[3] This was a very ancient privilege, being alluded to in an edict of Childebert I. in 595, and in one of Clotair II. in 615, while a charter of Chilperic II. in 717 declares that all donations from the royal fisc carry with them this immunity from public jurisdiction, thus giving rise to the seignorial "droits de justice" of the feudal system.[4] This

[1] Capitul. Lib. v. c. 387.—It is evident from this that the clause "ut episcopi justitias faciant in suas parochias" (Capit. Carol. Mag. ann. 794 § 4) refers only to ecclesiastical questions, which, indeed, may be gathered from the context itself.

[2] Capit. Carol. Mag. II. ann. 813 cap. 1.

[3] See Marculf. Formul. Lib. 1. No. 3, 4, 14, 16, 17, etc.

[4] These grants not unfrequently took a wider range, and in process of time contributed powerfully to render the hierarchy a class of feudal lords. Thus, in 848, a grant from the Emperor Lothair invested John, Bishop of Trieste, with all the imperial rights in that city and in its territory for a circuit of three miles, conveying not only the revenues from toll and tribute, but also the sole jurisdiction in all suits (Lünig Cod. Ital. Diplom. I. 2489). It was thus that the central power was parcelled out and the feudal system established.

In some places the clergy were carefully excluded from these privi-

privilege, though it conferred the power of life and death,[1] was exclusively a private right, and, however extensive the possessions of the church might be, it was far inferior to the public supremacy aimed at by the authors of the forgeries. Moreover, Charlemagne, finding that it interfered with his civilizing efforts, and that the ecclesiastical benefices were converted through it into asylums for malefactors, restricted it, in his additions to the Salic law in 803, by giving to the imperial officials the right to pursue criminals taking refuge in such territories, with heavy penalties for all attempts for opposition.[2]

To obtain for the church, as a recognized right, the power to administer justice, might well appear to the fabricators of Ingilram and Isidor an advantage worthy of serious effort. It might seem conferred by the broad prerogatives contained in the forged donation of the Western Empire by Constantine to Sylvester; but that document claimed too much, and had thus far been treated with silent contempt. Recourse was therefore had to a source of undisputed authority, wherein the presumable ignorance of laymen might allow falsification to escape detection. The Theodosian code was held in great respect throughout the West, where the legislation of Justinian was comparatively little known. The Wisigoths had even abandoned much of their ancestral jurisprudence in its favor, and, as the basis of all law for the populations not strictly Barbarian, it was the "Lex Romana quæ est omnium humanarum mater legum."[3] In this august and authoritative code a bold interpolation was effected by inserting, amid laws directly opposite in their tenor, one which authorized either party in a suit, at any stage of the proceedings, from the first plea to the time of rendering the verdict, to take the affair out of court

leges. Thus the Welsh laws provided that when an ecclesiastic was entitled to a place on the bench in consequence of territorial possessions, he must leave it before the rendering of the sentence.—Dimetian Code, Book II. chap. viii. § 132 (Owen's Ancient Laws, etc. of Wales, I. 479).

[1] Capit. Carol. Mag. IV. ann. 806 § 1.

[2] Ejusd. Capit. II. ann. 803 § 2.

[3] Capitul. Addit. IV. cap. 160.

and place it in the hands of a bishop, even against the protest of his adversary; and the decision of the holy prelate was to be without appeal, and to be held inviolate through all time. This monstrous perversion of justice was then transferred to the capitularies, where it was prefaced in the most solemn manner as having been adopted by the emperor, with the consent of his subjects, as part and parcel of the law of the land, binding on all the nations which owed obedience to the Carlovingian sceptre.[1] The False Decretals enforced its applica-

[1] Capitul. Lib. VI. cap. 366.—Historians have generally admitted the genuineness of Charlemagne's promulgation of this regulation. No original capitulary, however, has been found containing it, nor is it embodied in the authoritative collection of Ansegise; while its direct opposition to the leading principles of the Carlovingian policy is, I think, evidence sufficient to condemn the imperial sanction, as well as the forgery which it indorses. The latter still occupies its place in the Theodosian Code, and the demonstration of its falsity was reserved for the learned Godefroy, in the seventeenth century (Lib. XVI. Cod. Theod. Tit. 12).

It thus passed current throughout the middle ages, and was mainly relied on in 1329 by the bishops when they resisted the efforts of Philip of Valois to curtail the extensive and profitable jurisdiction of the spiritual courts. They boldly affirmed, indeed, that it was irrepealable—"imo est privilegium honorabile, toti ecclesiæ concessum, quod imperator tollere non potest, ut nec alias ecclesiæ libertates" (Bertrandi contra P. de Cugneriis Lib.).

The wide extent of this jurisdiction may be conceived from the limitations imposed on it in 1464 by Matthias I. of Hungary—"Præter factum testamenti, matrimonii, dotum et rerum paraphernaliarum, perjurii, verberationis et spoliationis clericorum et mulierum, ac præter illas alias causas quæ prophanæ non essent, in foro spirituali nulla causa tractetur" (Batthyani Legg. Eccles. Hung. I. 503). This was repeated in 1492 by Vladislas II. (Legg. Uladis. II. c. 14).

Until the revival of the civil law, there can be no question that this extension of ecclesiastical jurisdiction was in the main a benefit to humanity; but one great source of evil inherent in it was that the papal court constituted a tribunal of last resort, to which cases could always be carried by appeal. In process of time this came to be done even from the secular courts, for the authority of the pope was supreme over all human legislation. Innocent III. indeed asserted for the papacy supreme original jurisdiction over all cases which any one might elect to bring before it. He based this claim on the assumption that there must be sin on the part of one side or the other in all suits which gave him a right to interfere, and

tion by directing that all questions should be submitted to the church for adjudication, and that every one feeling himself wronged should have full liberty of invoking the ecclesiastical tribunals, which would see that he was righted.[1]

When such doctrines were successfully advanced, it is no wonder that the text "Spiritualis autem judicat omnia; et ipse a nemine judicatur" (1 *Corinth.* ii. 15) could be advanced as a maxim of law, showing that the ecclesiastic was empowered to judge all men and all things, and was himself to be judged by none[2]—and that this pretension was measurably successful is abundantly manifest. As the royal power declined, it leaned more and more upon the church for support, and endeavored to supplement its waning judicial authority by intrusting it to the hands of those who might have a better chance of obtaining obedience by combining the respect due to prelates with that due to judges. Thus, in the extradition treaties made by the sons of Louis le Débonnaire in 857 and 860, providing for the capture and delivery of all criminals

he strengthened it by adducing the interpolated law of Theodosius. This right of calling in the papal judgment was known as "evangelical denunciation," and was adopted by the church and became part and parcel of canon law (can. xiii. Extra II. 1). As regards the appellate jurisdiction, the complaints of the council of Constance in 1414 (Concil. Constant. Art. Reform. cur. Rom. No. vi. vii.) show that vast numbers of cases were carried up by suitors dissatisfied with the decisions of local judges, forming an abuse of no little magnitude. Yielding to the urgent solicitations of the council, Martin V. in 1418 issued a decree promising that cases from the secular courts should no longer be revised at Rome, but he stoutly maintained his right to review the proceedings of all ecclesiastical tribunals (Hartzheim. V. 137, 146). The extensive secular jurisdiction enjoyed by them rendered this an evil keenly felt by the community, as the power of thus carrying suits to so distant a point enabled wealthy pleaders to dictate terms of settlement to poorer antagonists.

[1] Quæcunque ergo contentiones inter Christianos ortæ fuerint ad ecclesiam deferantur, et ab ecclesiasticis viris terminentur.—Pseudo-Marcellin. Epist. II.

Omnis enim oppressus libere sacerdotum, si voluerit, appellet judicium, et a nullo prohibeatur, sed ab his fulciatur et liberetur.—Pseudo-Anaclet. Epist. I.

[2] Capitul. Add. III. c. 20.

escaping from one kingdom to another, it is curious to note that reference is made only to fugitives from episcopal sentences[1] —as though the functions of the royal courts had been virtually suspended. This, indeed, almost seems to have been the case. In 857 we find Charles le Chauve commanding that all malefactors throughout the kingdom — murderers, burglars, robbers, thieves, oppressors, etc.—should be tried by the bishops, and then handed over to the counts for punishment: while, to render this more efficacious, all priests were directed to make out lists of the offenders in their parishes, who were to be brought before the bishops if recalcitrant under the efforts of their pastors.[2] To make this jurisdiction, if possible, more complete, at the synod of Pontyon in 876 he invested the bishops with the authority of royal *Missi* in their respective dioceses.[3] Armed with this power, and under cover of a forged decretal attributed to Pope Eutychianus, a system of the most minute inquisition became established. In his visitations, the bishop summoned before him in every parish seven good men and true, who were sworn under the most solemn adjurations to answer all questions without fear or favor. A series of eighty-nine interrogatories was then put to them as to the commission in the parish of all the offences against human or divine law that the most perverse ingenuity could suggest. A more searching grand inquest could scarcely have been invented, as it must have elicited all the rumors, scandals, and surmises that floated around in each little community.[4]

The church thus absorbed, in theory at least, the whole administration of criminal justice, with its overwhelming influence; and, as if this was not sufficient, the power of sitting in judgment on the king himself, and of deposing him, was not only arrogated, but admitted. The sons of Louis le Débonnaire

[1] Capit. Carol. Cal. Tit. x. c. 5; Tit. xxxi. c. 5 (Baluz. II. 65, 139).

[2] Capit. Carol. Cal. Tit. xxiv. c. 3, 8.

[3] Capit. Carol. Cal. Tit. xlvii. c. 12.

[4] Reginon. de Discip. Eccles. Lib. ii. cap. 2, 3, 4, 5.—Burchard. Decret. Lib. i. c. 90–94.

had thus made use of the episcopal authority as a stalking horse in their parricidal chase, and, with the increase of episcopal prerogative, the invention returned to plague its inventors. Charles, guiltless in this respect at least, is seen addressing his prelates in 859, even in his hour of triumph after the recovery of his kingdom: "I should not be dethroned, at least without being heard and judged by the bishops, whose ministry consecrated me as king, who are styled the thrones of God, in whom God resides, and through whom He makes manifest His decrees. To their paternal admonitions and punishment I am ready to submit, and now do submit myself."[1] This was the acknowledgment and legitimate application of the doctrine attributed by Isidor to the humble Clement, disciple of St. Peter, commanding princes and peoples to render to priest and bishop the same obedience as that rendered to God, under the severest penalties in this world and the next.[2] The legitimate result of these principles was seen, when, in the thirteenth century, the secular lawgivers of Germany, framing a code for the people, declared that the pope is the fountain of justice, temporal as well as spiritual, and that from him is derived the jurisdiction of emperors and princes, who are bound to execute his decrees.[3]

[1] Capit. Carol. Cal. Tit. xxx. c. 3.

[2] Pseudo-Clement. Epist. III.—Also Ejusd. Epist. II.—"Quoniam qui eis resistit, Deo resistit."—Nearly as extravagant was the principle that the laity should do nothing without the consent of their bishops. Strangers were not to settle in a diocese, nor were the inhabitants to leave it, without episcopal permission—"Animæ vero eorum ei creditæ sunt; ideo omnia ejus concilio agere debent, et eo inconsulto nihil."—Pseudo-Clement. Epist. iii.—Remigii Curiens. Episc. can. 4, 5.

[3] Specul. Suevic. Introit. §§ 22, 23, 24. That this was extracted by the compiler of the code from the sermons of Berthold of Ratisbon (Alex. a Daniels de Saxon Specul. Orig. p. 19), does not render it less an authorized expression of the recognized doctrine of the period that the pope was the source of all human authority. It is somewhat singular, however, to observe it in a code wherein the revived imperial jurisprudence is quoted. In 1335 we find Bishop Alvarez Pelayo proving the same doctrine from the decretals—that the emperor is merely the vicar of the pope, and derives from him all his jurisdiction (De Planctu Eccles. Lib. I. Art. lxviii. No. I.).

Alongside of the secular judicial power thus obtained, there had gradually sprung up a spiritual jurisdiction which was even more potent and more lasting in its influence, and which gave added terrors to the exercise of secular justice by its command of the next world through the instrumentality of the dreaded anathema. To give to this important element in ecclesiastical authority the full consideration which it deserves, would, however, lead us too far from our present subject, and it will therefore be treated in a subsequent essay.

In the comprehensive struggle for independence and supremacy, of which we have thus traced out some of the details, but one point was wanting to release the church from all subjection to the secular authority. As long as the crown exercised the power of appointing to the high places in the hierarchy, its control could not be entirely shaken off, and the inferiority of the ecclesiastic was implied as well as expressed. That an effort should be made to get rid of the royal prerogative of investiture was therefore to be expected.

In the early period of the church the choice of its bishops was made by popular election, the community as well as the clergy enjoying the right of suffrage;[1] and in some places the people were held responsible for the misdeeds of their prelates, because they not only chose them, but had the power to eject the unworthy.[2] A certain amount of concurrent supervision over the fitness of the aspirant was also exercised by the neighboring bishops, owing to the necessity of their ministry in the consecration.[3] As these general principles were everywhere established, it is hardly worth while to trace the vicissitudes to which they were exposed by time or accident, and while the Christians continued a poor and insignificant sect,

[1] Qui præfuturus est omnibus ab omnibus eligatur.—Leon. PP. I. Epist. 10 cap. 6.

[2] Cyprian. Epist. 67 (Ed. Oxon.).

[3] Cyprian. loc. cit.—Concil. Laodicens. can. 12, 13—Concil. Sardicens. can. 6—Cf. Chr. Lupi Scholion in Can. Nicæn. 4 (Opp. I. 239).

unrecognized by the law, or recognized only in persecution, no interference with their choice of ecclesiastical superiors was to be expected from the secular magistrates. As the church became wealthy and powerful, however, common prudence would dictate to the sovereign the necessity of some control over the selection of those who were in reality high officers in the state as well as spiritual dignitaries. While the minor bishoprics thus might continue to be filled as of old by the choice of the community, the powerful primatial sees would naturally fall under the influence of the throne, and we have seen that eventually the right of confirmation virtually amounted to the right of appointment in the case of him who was highest of all.[1]

The church thus paid the penalty of its worldly aspirations; and the temporalities to which it clung with such tenacity weighed it to the earth and rendered it the subject of those whom it desired to master. As its territorial acquisitions increased, so grew the necessity of royal supervision and control over those who administered them.[2] The tribute of military service owed by the lands was in itself a sufficient reason for the king to have some part in the nomination of those who were to render it in person or by proxy, and though Charlemagne forbade ecclesiastics from bearing arms themselves, he took care not to exempt them from the duty of furnishing their quota of troops. The theory therefore was election by the

[1] Odoacer stretched his prerogative somewhat when he demanded to be consulted in advance—a presumption which was condemned after his overthrow (Synod. Roman. IV. c. 2), but which was apparently submitted to without remonstrance during his life.

[2] I have not space to enter upon the history of the territorial aggrandizement which rendered the ecclesiastical body so formidable a portion of the feudal republic. The general facts are well known, and a detailed investigation would require a treatise in itself. A single instance will sufficiently illustrate the result—that in the eleventh century the Abbey of Fulda held fiefs which were bound to furnish to the imperial service no less than six thousand well-appointed fighting men.—Englehus. Chron. ed. 1671 p. 199.

diocese in general, confirmation by the king, and consecration by the metropolitan and his suffragans; but the right of confirmation implies the right of rejection, and the latter, in the hands of energetic or unscrupulous sovereigns, practically amounts to the appointing power.

Scarcely had the Franks secured to themselves their rapid conquest of Gaul when even the zealous piety of recent conversion could not restrain them from assuming this right of appointment in its most absolute form as a portion of the royal prerogative; and the repeated allusions of Gregory of Tours show that it was the rule and not the exception. Thus, in the important diocese of Tours we find, in 520, the singular spectacle of two bishops conjoined, Theodorus and Proculus, by command of Queen Clotilda.[1] In a little more than a year they are succeeded by Dinisius, chosen by the king; and two years later the see is occupied by Ommatius, by order of King Clodomir.[1] The bishoprics were wealthy, the sovereigns were greedy, and it was not long before the royal prerogative was made a source of revenue. As early as 517, when St. Quintianus was elected by the people to the see of Auvergne, a certain Apollinaris hastened to King Thierry, and by heavy bribes secured the appointment in defiance of the popular wish.[2] It is true that half a century later Gontran showed his independence of such considerations when he indignantly rejected the presents offered to induce him to abandon his intention of bestowing the see of Bourges on Sulpitius,[3] but an incidental remark of Gregory of Tours in his life of St. Gall of Clermont, indicates that simony was already becoming a recognized custom,[4] and the condemnation of such practices by the Council of Orleans, in 549, shows that they amounted to an evil of magnitude.[5] Even when the nomination to bishoprics was not a

[1] Greg. Turon. Hist. Franc. Lib. x. cap. 31; Lib. III. cap. 17.
[2] Ibid. Lib. III. cap. 2.
[3] Ibid. Lib. VI. c. 39.
[4] Greg. Turon. de Sanct. Patr. cap. 3.
[5] Concil. Aurelianens. V. ann. 549 can. 10. This canon recognizes the concurrent authority of the sovereign.

matter of bargain and sale, and when the forms of an election were preserved, it was often nothing more than an acknowledged farce. On the death of St. Gall of Clermont, about 550, a priest named Cato was elected his successor. Theodebald the king was a mere boy, and Cato ventured to assume the episcopal functions without awaiting the royal confirmation. He quarreled with and imprisoned his archdeacon, Cautinus, who managed to escape and fled to the court, where he found himself the first to announce the death of St. Gall. Taking advantage of the opportunity he procured the grant of the bishopric, and when Cato's messengers arrived to ask for confirmation, they found him already consecrated. Cautinus took possession of the see, but his enjoyment of it was troubled by the partisans of Cato, and to rid himself of the annoyance he procured for his rival an election to the see of Tours on the death of Gunther in 555. Cato meanwhile had curried favor with Prince Chramnes and had received a promise that on the death of Clotair he should be reinstated in Clermont; so, when the Tourangeois came to invite him, he hesitated to accept, and they curtly told him to decide at once, as they had not chosen him of their own free will, but by the order of the king. He let them depart, when they elected Euphronius, and on presenting his name for appointment to Clotair they were sternly asked why they had disregarded his commands with respect to Cato. The latter then applied again for reinstatement in Clermont, but the king only laughed at him.[1]

Such habitual invasions of the primitive liberties of the church were not submitted to without a struggle. A council of Paris, in 557, protested against the abuse of the royal power, in a canon which directs that any appointee not duly elected shall be refused ordination by the metropolitan and his suffragans, and that any episcopal traitor not keeping the engagement shall be cut off from communion with the rest.[2] How impossi-

[1] Greg. Turon. Hist. Franc. Lib. iv. cap. 5, 6, 7, 11, 15.

[2] Concil. Paris. III. ann. 557 can. 8.

ble it was to maintain this resolution in opposition to the brute force of the Merovingian kings is exemplified by a transaction occurring a few years later. A certain Emerius was installed as Bishop of Saintes by order of Clotair I., under circumstances of peculiar irregularity, the king having dispensed with the services of the metropolitan in the consecration. At the death of Clotair, the offended Archbishop Leontius, relying on the presumable weakness of a new king, vindicated the canon of Paris by assembling a synod, deposing the intruder, and sending a new bishop-elect to Charibert for confirmation. Royalty asserted its rights after its own fashion. The unhappy expectant, Heraclius, was banished after undergoing a savage punishment, Emerius was reinstated, and the archbishop and his prelates were visited with fines graduated to the utmost possibility of payment—and thus, says the historian, the king revenged the insult offered to his father.[1]

Yet the endless struggle continued. In 615 a council of Paris made another effort to achieve independence by pronouncing null and void the consecration of any candidate not duly elected by the people and clergy, with the approbation of the provincial bishops;[2] but the attempt was vain, for when Clotair II. gave legal validity to the canons by publishing them in a royal edict, he introduced a clause excepting the royal courtiers from the effects of the prohibition.[3] The clergy some ten years later gathered courage to return to the attack, and at the council of Rheims, in 625, reaffirmed the canon of Paris, with the addition that only inhabitants of a diocese were eligible to its episcopate—apparently with the view of precluding the nomination of courtiers—and moreover suspension for three years was threatened against all who should assist in the consecration of any one not regularly elected under these conditions.[4] Of how little avail was this we learn from a precept of Dagobert I., in 630, conferring the see of Cahors on Didier

[1] Greg. Turon. Hist. Franc. Lib. iv. cap. 26.

[2] Concil Paris. V. ann. 615 can. 1.

[3] Edict. Chloth. II. § 1.

[4] Concil. Remens. ann. 625, can. 25.

his treasurer, who was not even in orders at the time. It speaks, indeed, of the consent of the people having been given but not of their having elected the candidate; and the terms of the act itself, as also of the order to the archbishop to consecrate the nominee, are those of a master exercising his pleasure without a doubt as to its legality.[1] Still the clergy did not abandon the field, and the canon of Paris was re-enacted by the council of Chalons, in 649;[2] but the tendencies of the age were against them, and even Marculfus, in giving the formulas for such occasions, couches them in terms of absolute royal command, with no allusion to any elective franchise having been exercised in favor of the recipient, though a formula of petition from the people asking the approbation of the king shows that the right of election was occasionally admitted in strict subordination to the will of the sovereign.[3] A passage in the Bavarian code, revised under Dagobert, would also indicate that the practice was similar in the Christianized portions of Germany.[4] In Spain, not long after, a canon of the twelfth council of Toledo, held in 681, allowing no right of suffrage whatever to either clergy or people, shows that the royal power of nomination was even recognized and admitted by the church.[5] The resistance of the Gallican clergy to the prerogative of the crown also ceased when the anarchy under the Mayors of the Palace secularized the church and wellnigh obliterated all Christian observances. Charles Martel bestowed without scruple the richest episcopates as prizes on his rugged warriors;[6] and when Boniface, as papal legate, undertook with Carloman and Pepin to restore the re-

[1] Dagoberti Præceptum (Baluz.). Didier evidently considered himself indebted to the king and not to the people for his bishopric, when he addresses Dagobert—"Cadurchæ ecclesiæ cui (Deo auctore) ex jussu vestro præsideo"—Epist. Francor. 41 (Freher. Corp. Hist. Franc.).

[2] Concil. Cabillon. ann. 649 can. 10.

[3] Marculf. Lib. I. No. 5, 6, 7.

[4] L. Baioar. Tit. I. cap. 11 § 1.

[5] Concil. Toletan. XII. can. 6.

[6] Religio Christianitatis pæne fuit abolita: ita ut episcopis in paucis locis relictis, episcopia laicis donata, et per eos rebus divisa, exstiterint—Hincmar. Vit. S. Remig. Præf.

ligion of France, not only was the royal power of appointment fully recognized by the synods of Leptines and Soissons, but the mayors were empowered to bestow for a time a portion of the temporalities of the church to reward their soldiers.[1] Boniface himself, the most uncompromising advocate of ecclesiastical privilege, received the archiepiscopal see of Mainz from his royal patrons.[2]

As Charlemagne thus by tradition and prescription had the right of investiture with respect to all ecclesiastical dignities, the much-disputed grant of this prerogative by Adrian in 774 could only serve as a confirmation and not as a source of the power.[3] At all events, he was not disposed to allow his pre-

[1] Lupi Ferrar. Epist. 81.

[2] S. Ludgeri Vit. S. Bonif.

[3] According to Gratian, Adrian not only gave, as mentioned above (p. 36), the right of choosing the popes, but also that of confirming and investing all bishops—"Insuper archiepiscopos et episcopos per singulas provincias ab eo investituram accipere definivit : et ut nisi a rege laudetur et investiatur episcopus a nemine consecretur" (Gratian. Dist. 63 can. 22).

This expression so exactly suited the pretensions of the emperors in their quarrel with the popes over the question of the investitures that it has a somewhat suspicious appearance of fabrication at a time when neither party had much scruple in manufacturing documents to serve their purposes. It is no wonder, therefore, that Baronius (Ann. 774, No. 10–13) rejects it with indignation, pronouncing it a moral impossibility, and asserting that as Sigebert of Gemblours (Chronog. ann. 773) is the earliest authority for the story, it must be an invention of his to assist the imperialist party, which he favored. At first sight this argument is specious, but the cardinal forgot its presence in the Panormia of St. Ivo of Chartres (Lib. VIII. cap. 135) anterior to Sigebert—and neither Ivo nor Gratian was likely to depress gratuitously the sacerdotal authority. Martin of Fulda, a writer of the fourteenth century, alludes to it as an undisputed fact, but assumes that the grant was merely special and temporary, and subsequently withdrawn (Martin. Fuldens. Chron. sub. Gregor. VII.). Jordan, an Italian chronicler of the same date, likewise assumes its truth (Chron. Jordani cap. 218 Partic. 2). During the quarrels between the popes and the emperors on the subject of the investitures, it was freely invoked as authority by the imperialists (Walthram. Episc. Neuenburgens. de Invest. Episc. ann. 1106). In modern times, Baluze, whose orthodoxy is I believe admitted, alludes to it as incontestable (Vit. Mauric. Burdin. cap. 16—ap. Miscellan.) ; but Peter

rogative to become obsolete, and the terms in which he is addressed by Leidrad, Archbishop of Lyons, show that he was

de Marca pronounces it supposititious, and supports his opinion with reasons much sounder than those of Baronius (De Concord. Sacerd. et Imp. Lib. VIII. cap. 12).

In 806 we find Leo III. treating Charlemagne's prerogatives in these appointments as a matter of course (Leon. PP. III. Epist. I. ap. Cod. Carolin.), and a century later the authenticity and binding force of the grant itself were admitted by John X. when intervening in the quarrel between Hilduin and Richarius, contestants for the see of Tongres, in 921, for he expressly states that Charles the Simple had the right of appointing bishops "sicut priores suos antecessores, nostrorum antecessorum auctoritate" (Hartzheim. Concil. German. II. 597). The very points which seem incredible to Baronius are included in a similar grant made to Otho the Great by Leo VIII. in 963 (Gratian. Dist. 63 can. 23.—Ivon. Panorm. Lib. VIII. cap. 136); and though Leo is commonly reckoned as an antipope, notwithstanding that he is counted in the pontifical series, still his bull is incontestably genuine, and as it contains a reference to the previous grant by Adrian—"ad exemplum beati Adriani sedis apostolici episcopi"—it carries the affirmation of Adrian's act nearly to the end of the second century from its date. Even before the condemnation of John XII. and elevation of Leo VIII., the Romans had taken an oath to Otho patterned on those exacted by the earlier Carlovingians—"nunquam se papam electuros aut ordinaturos præter consensum et electionem domini imperatoris Ottonis Cæsaris Augusti, filiique ipsius regis Ottonis" (Liudprandi Hist. Otton. cap. 8). How complete was the supremacy exercised by the Saxon emperors is shown in a charter of Otho III. to Silvester II. in 999, wherein he remarks: "Dominum Silvestrum magistrum nostrum papam eligimus, et Deo volente, ipsum serenissimum ordinavimus et creavimus" (Migne's Patrolog. T. 148, p. 840).

At the most, the privileges granted by Adrian were little if any more than the traditional right possessed by the sovereign of Italy, and the grant itself was rather a recognition of Charlemagne as king of Italy than the specific donation of power. We have seen how Odoacer and Theodoric and Theodatus exercised it without scruple, Arians though they were, and how the Catholic emperors of Constantinople followed their example when they fell heir to the Gothic kingdom—at least with respect to the right of confirmation and rejection. To minds familiar with a custom of such long duration, it might readily seem that the protection so earnestly craved at the moment—for the siege of Pavia was not yet ended—could not be efficient without some corresponding control, and the exact nature of the right bestowed is merely a question of terms. When the temporal

regarded as the unquestionable dispenser of episcopal preferment.[1] If anything were wanting to prove the unrestricted control which he exercised over episcopal appointments, it would be supplied by the lively description given by the monk of St. Gall of the intrigues of the courtiers to obtain from him the nomination of their favorites on the occurrence of a vacancy, and of the manner in which the Empress Hildegarda, on one occasion, sought to procure for a clerk of her own a bishopric which he had already promised to another. Once, when the death of a prelate was announced to him on the eve of St. Martin, he gave, without waiting, the see to one of his attendant ecclesiastics, who proceeded to celebrate the unexpected good fortune by a feast, at which he so intoxicated himself that he was unable the next morning to perform his allotted part in the ceremonial of the day; whereupon Charlemagne withdrew his promise, and bestowed the episcopate upon an humble and ignorant clerk who had chanced to replace the disappointed aspirant in the services of Martinmas.[2]

authority was present and active, confirmation would imply selection; when distant or abased, the privilege might be merely nominal.

This question affords an instructive illustration of the unconscientiousness which renders the mediæval papal historians such insecure guides. The Archbishop Martinus Polonus, in his Chronol. Pontificum, written in the thirteenth century, when relating the transaction, by an ingenious transposition of nominative and dative terminations, makes Charles the giver and Adrian the recipient of control over the Western hierarchy (Chronol. Martin. sub Adrian.). Vigilant criticism expunged from his pages the obnoxious account of Pope Joan, but found nothing to object to in this falsification.

[1] Olim me exiguissimum famulorum vestrorum ad regimen ecclesiæ Lugdunensis destinare voluistis. . . . Denique postquam secundum jussionem vestram sæpedictam ecclesiam suscepi, etc. (Mag. Bib. Pat. T. IX. P. I. p. 626.) Cf. Monach. S. Gallens. de Vita Carol. Mag. Lib. I. cap. 4, 5, 6.

[2] Monach. S. Gall. de Vit. Carol. Mag. Lib. I. cap. 4, 5.—The expression placed by the monk in the mouth of the emperor—"Superbus ille . . . . divino et meo judicio careat episcopatu, et tu illum, Deo donante et me concedente, *juxta canonicam et apostolicam auctoritatem*, regere curato"—shows that in his time, at the close of the ninth century, the

These and other anecdotes related by the monk show that no other appointing power was thought of, and that the eager clerks of the imperial court were ever on the watch for news of episcopal vacancies in order to have the first chance of securing the favor of the emperor.[1]

It need not, therefore, surprise us to see that when Charlemagne, in 803, granted to the people and clergy of the dioceses the right of electing their bishops, he did it in terms which imply that it was a favor of the imperial grace, and not a simple acknowledgment of a pre-existing privilege. That it was so regarded is shown by its repetition being procured from Louis le Débonnaire in 816, shortly after his accession.[2] As there is no allusion in these capituiaries to the imperial assent being required, it has been assumed that the right of confirmation was then formally abandoned. This is utterly without foundation. Louis bestowed bishoprics as freely as any other dignities in his realm.[3] The sixth council of Paris, in 829, recognizes his right in the matter, and the corresponding duty incumbent upon him to exercise the power judiciously.[4] When elections were permitted, they took place under the supervision of an imperial commissioner appointed for that purpose. If an unworthy choice was made, or if improper arts were employed to obtain the popular suffrage, not only was the successful candidate rejected without hesitation, but the emperor forthwith filled the vacant see without reference to clergy or people, on the ground that they had forfeited the franchise by its injudicious exercise.[5]

That these powers were rigidly enforced we may readily

grant of Adrian was regarded as indubitable, and was looked upon as the least humiliating source of the royal power over preferment.

[1] Monach. S. Gall. cap. 6.

[2] Capit. Carol. Mag. I. ann. 803 cap. 2.—Capit. Ludov. Pii ann. 816 cap. 2.

[3] See, for instance, Thegan. Vit. Ludov. Pii cap. 24, and the supplication of the citizens of Mainz in 835 (Bonifacii Epist. 117).

[4] Concil. Paris. VI. can. 22.—Capitul. Add. II. cap. 26.

[5] Formul. Promot. Episcopor. VI. (Baluz. II. 603-4.)

believe; for even after the civil wars had reduced the royal power to comparative insignificance, the privilege of popular election hardly amounted to more than the *congé-d'élire*— that ingenious fiction by which the Anglican church reconciles apostolic tradition with the supremacy of the Defender of the Faith. Thus, in 844, the synod of Thionville requests the sons of Louis to nominate incumbents for the sees then vacant;[1] and soon afterwards the synod of Verneuil petitions Charles le Chauve not to allow the see of Rheims to remain longer without a bishop, and also not to withhold his assent to the installation of Agius, who a year before had been elected to the diocese of Orleans, and had been consecrated by Wenilo, his archbishop.[2] So, when some irregularity prevented the induction of Wolfadus, bishop-elect of Langres, the synod of Chiersy applied to Charles to appoint another; and though the king graciously permitted the synod to make the election, yet they considered it necessary to obtain the royal approbation of their choice, and they appealed to the arch-chaplain Hilduin for his influence in securing it, in terms which mark how absolute was the prerogative of the sovereign, and how little his assent was to be expected as a matter of course.[3]

The change in tone wrought by a few years is therefore striking, in the bold epistle addressed by the Neustrian bishops, in 858, to Louis le Germanique, then in almost undisputed possession of his brother's kingdom, where we find a declaration of independence to the effect that the churches which they held were not benefices to be bestowed by the king at his pleasure, or resumed; and when in 880 the unquestionable right of the sovereign to put forward a candidate for election was stigmatized by Hincmar, in a letter to the king, as a doctrine beleched forth by hell.[4] So Florus Diaconus, shortly after the middle of the century, stoutly denies the right of the sove-

[1] Capit. Carol. Cal. Tit. II. cap. 2.
[2] Capit. Carol. Cal. Tit. III. cap. 9, 10.
[3] Flodoard. Hist. Remens. Lib. III. cap. 24.
[4] Capit. Carol. Cal. Tit. XXVII. cap. 15.—Hincmari Epist. XIX. cap. 3.

reign to dispose of bishopries, assuming that if his assent is asked, it is only to promote good-feeling—"ad cumulum fraternitatis;" while the imperial authority to supervise papal elections is utterly repudiated.[1] A similar contrast is afforded between Leo IV. in 853 humbly asking the Emperors Lothair and Louis II. to permit the consecration of Colonus as Bishop of Rieti, or, if they preferred, to bestow on him the see of Tusculum, and Nicholas I. in 863 sternly reproving King Lothair for using his influence to sway the elections of bishops in Lotharingia, and forbidding him to allow certain sees to be filled until the papal pleasure should be consulted.[2]

In Italy, indeed, the papal power eagerly grasped at the prerogative which was escaping from the sovereign, and the people were further than ever from regaining their rights. Thus, in 879, we find John VIII. threatening Romanus, Archbishop of Ravenna, with condign punishment for disregarding his orders in filling the see of Sarcina;[3] and again in 881 he ordered Romanus to consecrate a certain Dominic as Bishop of Faenza, with the significant hint that in case of disobedience he would himself perform the ceremony. Romanus thereupon grew restive, and installed a rival, Constantine, whom John promptly excommunicated, and, treating the transaction as invalid, placed the bishopric, as a vacancy, under the visitatorial charge of the Bishop of Cervia.[4] As both of these sees belonged to the province of Ravenna, and as there is no allusion to any popular election in favor of the papal nominee, the terms of absolute command employed by John show how completely the popes had fallen heir to the imperial prerogatives to which his predecessors had yielded so submissively.[5]

[1] Flori Diac. Lib. de Elect. Episc. cap. 4, 6.

[2] Gratian. Dist. 63 can. 16.—Nichol. PP. I. Epist. 58.

[3] Johann. PP. VIII. Epist. 199. [4] Ejusd. Epist. 325, 322, 326.

[5] When it suited his politics, however, John freely admitted the rights of the secular authority. Thus, in 879, when he was anxious to follow up his excommunication of Anspert of Milan, he attributed to Carloman, King of Italy, the unrestricted power of bestowing the bishopric of Ver-

Had the popes confined their pretensions in this respect to Italy, there would have been no great harm done, but eventually they claimed the control of every episcopate in Christendom with an energy which filled Europe with confusion for centuries. The time as yet had not come for this, however, and Nicholas I. was disinterestedly anxious to free the church from subjection to the temporal power. To secure this, he laid down, in 865, the rule that bishops were to be elected by the clergy alone, thus depriving the laity of their immemorial right of suffrage.[1] The bishops, too, were eagerly striving to render the necessity of their ministration a controlling element in the selection of their fellow-suffragans, and in this they were supported by various ancient canons which show that it was admitted to a greater or less extent in the early church,[2] and by the more recent authority of the second general council of Nicæa, which in 787 placed the choice exclusively in the hands of the provincial bishops, and declared null and void all nominations by the temporal authority.[3] Although this council was received by the Christian world as œcumenic, still its canons in this respect had received as little attention from Charlemagne as those relating to image worship, and even in Rome they were soon disregarded, for a synod held in 826 by Eugenius II. forbade the consecration of any bishop unless he was regularly demanded by both clergy and people.[4] The eighth general council, however, held at Constantinople in 869,

celli, and he treated as null and void the consecration bestowed on another candidate by the archbishop.—Johann. PP. VIII. Epist. 267.

[1] Nicholai PP. I. Epist. 82 cap. 4.

[2] Concil. Nicæn. I. can. 4. 6.—Laodicens. can. 12.—Antioch. can. 16.—Carthag. II. can. 12.—Arelatens. II. can. 5, 54.—In the Spanish collection of Martin of Braga, by an interpolation in the Laodicean canon, the people were especially excluded from all participation in episcopal elections (Martin. Bracar. can. 1). We have already seen, however, that among the Wisigoths the kings had succeeded in having the appointing power transferred to themselves.

[3] Concil. Nicæn. II. can. 3.

[4] Pertz, Legum T. II. P. II. pp. 11–15.

repeated the commands of that of Nicæa, and endeavored to enforce it by fulminating the anathema against all temporal princes who should endeavor to interfere in the selection of bishops.[1]

These efforts were strictly in accordance with the practice of the East, where, notwithstanding the undisputed authority in ecclesiastical matters assumed by the Byzantine emperors, they were accustomed, nominally at least, to exercise much less control over episcopal elections than the sovereigns of the West. Except in the case of the patriarchs, they generally allowed the church to regulate for herself the personality of her prelates. Theodosius the younger had placed in the hands of the Patriarch of Constantinople the power of confirming all elections to bishopries;[2] and though in the next century Justin II. had given rise to great complaint by openly trafficking in episcopal nominations,[3] still the rules expressed by the councils of Nicæa and Constantinople were generally respected. Justinian promulgated the rule that the people of the diocese should elect three candidates, from among whom the selection was made by the metropolitan,[4] and this was continued in force by Leo the Philosopher.[5] It was reserved for Nicephorus Phocas, about 965, to assume definitely the disposal of bishopries, which the historian assures us he sold to those who could pay his price from exactions on their flocks.[6] When, of all the tyrannical acts of the abhorred Nicephorus, this was considered to be the worst, we may readily conclude that it was an innovation, although the indignation of the historian is doubtless to be divided between the despotism and the avarice of the emperor. It was not long endured, however, for when, in 969, John Zimiskes by midnight assassination sought the crown of his uncle and benefactor, the pardon for his crime, which lacked nothing to fill the measure of its atrocity, was purchased

[1] Concil. General. VIII. can. 22.
[2] Socrat. Hist. Eccles. Lib. VIII. cap. 28.
[3] Evagrii Hist. Eccles. Lib. V. cap. 1.
[4] Novell. 123 cap. 1.
[5] Basilicon Lib. III. Tit. I. cap. 8.
[6] Cedrenus sub. Niceph.

by the repeal of the obnoxious laws of Nicephorus, such being the condition on which the murderous usurper was crowned by the Patriarch Polyeuctes.[1]

In the West the bishops were not so fortunate, though various allusions in the epistles of Lupus of Ferrières show that they strenuously struggled to obtain control over the choice of their associates.[2] The necessities of the times were peculiarly opposed to such pretensions, for the poorer and more powerless were the kings, the more pressing became their wants. Services which they could not command had to be bought; and, as the royal fisc was for the most part exhausted, they could be liberal only with the property of others. In those dismal times of anarchy, the arbitrary acts which purchased the temporary fidelity of the powerful by spoiling the weak grew more and more frequent, and rich bishoprics and fat abbeys were often the readiest means at hand to silence the hungry horde of rebellious chieftains. In abuses such as these the crown and the nobles supported each other, and the church could only submit. The regulations laid down by the council of Valence, in 855, show that no episcopal election could be held without the express permission of the sovereign; and that, if in place of allowing this the king chose to make an arbitrary appointment, the only recourse was an humble remonstrance in cases of manifest unfitness of the nominee.[3] How recklessly this power was often exercised is shown by the appointment, in 856, by Charles le Chauve, of a successor to St. Folcuin, Bishop of Terouane, before that aged prelate was dead—an indiscretion rendered the more conspicuous by the frightful effects of the malediction pronounced by the incensed saint on the unlucky interloper[4]—and scarcely less arbitrary was his action

[1] Cedrenus sub. Johann. Zimisk. Zimiskes, apparently, was a special favorite of the Virgin Mary.—Zonaræ Annal. sub eod. Cf. Astolfi Hist. delle Imagine della gran Madre di Dio, Lib. V. (Venet. 1634).

[2] Epist. 79, 81, 98, etc.

[3] Concil. Valentin. III. ann. 855 can. 7.

[4] Vit. S. Folcuin. cap. 13.

when, in 866, he cut short the deliberations of a synod on a knotty point of canon law by appointing on his sole authority Wulfadus to the important archiepiscopal see of Bourges.[1] When, indeed, about the same time he bestowed the wealthy abbacy of Tours on Robert-le-Fort, the head of the house of Capet, he little thought that he was founding a line of royal hereditary abbots who for eight centuries would wear the mitre under the crown.[2] Yet the pretensions of the church continued to gain ground notwithstanding the arbitrary exercise of power manifested whenever the incessant turmoil afforded the sovereign an opportunity of exerting his ancient prerogative. The acts of the examination of Willibert, applying in 868 to be consecrated to the see of Chalons, show how rigorously a high churchman like Hincmar could assert his supervisory functions, even after the performance of a canonical election followed by the confirmation of the sovereign. In this case, Charles, in place of commanding the installation of the bishop-elect, simply prayed that the office might be bestowed on him if he should be deemed worthy, thus formally recognizing the power of rejection assumed by the bishops of the province.[3] In the general scramble for the fragments of kingly authority, the metropolitans, too, endeavored to grasp a share, and they readily yielded to the temptation of abusing their supervisory power by acts as arbitrary as those of the sovereigns. Thus, in 844, in a vacancy occurring in the see of Autun, we find Wenilo of Sens addressing Amulus, Archbishop of Lyons, in the name of Charles le Chauve, asking his confirmation of the royal nomination to the bishopric in terms which show that, though the royal power to appoint was asserted to be derived from the

[1] Annal. Bertin. ann. 866.

[2] Abbeys were regularly in the gift of the crown. Though Louis le Débonnaire, in 816, conceded the right of election to the monks (Capit. Aquisgranens. ann. 816 cap. 5), yet, in 823, we find him issuing his orders—"Abbatibus quoque et laicis specialiter jubemus ut in monasteriis quæ *ex nostra largitate* habent," etc. (Capit. Ludov. Pii ann. 823 cap. 8.)

[3] Baluz. II. 612–6.

popes, yet that without the assent of the metropolitan it would amount to but little in practice.[1] That this was so is proved by the fact that, on the death of a Bishop of Vence, the Archbishop of Embrun refused consecration to a candidate duly elected by the diocese and confirmed by the king, and proceeded to install a favorite of his own, whom he endeavored to force upon the reluctant flock. John VIII. readily listened to the complaints of the ejected aspirant, stigmatized the conduct of the archbishop as uncanonical, and took advantage of the quarrel to make good the claims of papal supremacy by summoning both parties before him for examination.[2]

Still the sovereign struggled to maintain his prerogative, and was supported by his nobles, for when Charles and his people provided for the conduct of the state during his absence in Italy, the celebrated Capitulary of Chiersy records the agreement that if any bishopric should become vacant while he was beyond the kingdom, it should remain unfilled until he could be notified of the fact.[3] Yet notwithstanding this, the bishops continued to press their advantage and assumed that they had succeeded to all the powers once possessed by the crown. Thus, about 880, the people of Beauvais successively elected three bishops who were one by one rejected by Hincmar and his suffragans. With the assent of the Beauvoisins, Louis le Bègue then urged the nomination of a fourth, but Hincmar, speaking for the synod of St. Macra, laid down the law that the functions of the consecrating bishops in reality constituted the election, that the confirmation by the sovereign was a mere formality, and that the people of Beauvais had forfeited the right to have anything to say in the matter.[4] So, in 895, the interference of Pope Formosus was invoked to aid a certain Berthair, regularly elected to the see of Chalons and confirmed by King Eudes, whom Fulk, Archbishop of Rheims, refused to admit. King and pope were alike powerless in the matter,

[1] Lupi Ferrar. Epist. lxxxi.
[2] Johann. PP. VIII. Epist. 101.
[3] Capit. Carol. Cal. Tit. LIII. cap. 8.
[4] Hincmar. Epist. XIX. cap. 4, 6.

for Fulk instigated one of his vassals to drive out and imprison Berthair, and then he placed the diocese of Chalons under the charge of the Bishop of Teroüane, who was at that time a fugitive from the ravages of the Northmen.[1]

No general principles can be deduced from the acts of a period of anarchy, when the law of the strongest thus affords the only right. When the Capetian revolution marked the establishment of the feudal system, one of its incidents was the transfer to the great feudatories of the control over the bishoprics previously enjoyed by the crown.[2] This was subsequently revendicated as the power of the sovereign gradually reasserted itself, and the happy thought of a concordat enabled king and pope to share the plunder which belonged to neither.[3] How little the rights of those most concerned were regarded by the contending parties during the struggle may be learned from the quarrel over the succession to the see of Bangor under Thomas à Becket. Meurig, Bishop of Bangor, died in 1161, when Owen, Prince of Gwynnedd, exacted an oath of the cathedral chapter to elect no one without his approval. St. Thomas denounced this as a flagrant invasion of the liberties of the church; he procured from the pope, for the archdeacons and canons, an absolution from their oath, and, in announcing this to them as a special favor in their behalf, he added that if they did not promptly elect his nominee to the bishopric, he would at once excommunicate them, and subject the whole diocese to an interdict.[4] Placed thus between two fires, the chapter natu-

[1] Flodoard. Hist. Remens. Lib. III. cap. 3.

[2] Dux Aquitanorum et alii proceres potestatem super episcopos, quam antea regis habuerunt tenere cœperunt.—Chron. Richardi Pictaviens. (Martene Ampl. Coll. V. 1168.)

[3] See the bitter complaints of Nicholas de Clamanges over this unholy alliance and his description of its effects on the character of the church. (De Ruina Ecclesiæ cap. xviii.) The council of Constance, among other projected reforms, proposed to restore the rights of election to bishoprics, but it was eluded as skilfully as the other well-meant endeavors to stay the downward progress of the church.—Reform. Constant. Decretal. Lib. I. Tit. iii. (Von der Hardt, Tom. I. p. 671).

[4] S. Thomæ Cantuar. Epist. 112–115.

rally did nothing, and for nine years Bangor was deprived of a bishop. The true remedy was that suggested by the Emperor Henry V. when he offered to surrender all the ecclesiastical rights demanded by Rome, if the church would abandon the temporalities which gave him a claim to the investitures.[1] So thought Arnold of Brescia, who expiated at the stake his zealous efforts to purify the temple by clearing it of the worldly treasures which encumbered it. So, too, thought Dante when he prophesied that the "Veltro" would reform the abuses which had so utterly perverted the design and the principles of Christianity—

> "Non fu la sposa di Christo allevata
> Del sangue mio, di Lin, di quel di Cleto,
> Per essere ad acquisto d'oro usata . . .
> In vesta di pastor, lupi rapaci
> Si veggion di quassù per tutti i paschi, . . .
> Ma l'alta providenza . . .
> Soccorrà tosto, sì com' io concipio."
>
> (Paradiso, XXVII.)

And not long after the death of the great Florentine, an honest Swiss churchman, in deploring the quarrel between Louis of Bavaria and the papacy, attributes all the disorders and misfortunes of the church to the lust of temporal dominion and wealth excited by the donations of Constantine and Charlemagne—

> Rex Constantinus cum successoribus suis
> Si Papæ regna tam pinguia non tribuisset,
> Tunc humilis staret, simplicitate pia . . .

[1] The church of Liège, in defending itself from the thunders of Paschal II., incurred through its fidelity to Henry V., quotes a passage from St. Ambrose singularly to the purpose—"Si Christus non habuit imaginem Cæsaris, cur dedit censum? Non de suo dedit; sed reddidit mundo quæ erant mundi. Et tu si non vis esse obnoxius Cæsari, noli habere quæ mundi sunt. Sed si habes divitias, obnoxius es Cæsari. Si vis nihil debere regi terreno, dimitte omnia et sequere Christum."—Udalr. Babenb. Cod. Lib. II. cap. 234.

Sed quia dotavit Cæsar nimis atque ditavit,
Fertilibus terris Papas, ideo tumuerunt,
Et cupide certant carpere plura bona . . .
Hæc pestis sæva causata avaritia.
Ecclesiam nummus vilem fecit meretricem,
Nam pro mercede scortum dat se cupienti.[1]

[1] Vitodurani Chron. ann. 1344 p. 69 (Thes. Hist. Helvet.). Vitoduranus was a good Catholic, and a pious hater of heretics and Jews. The opinions thus expressed were not singular. Nicholas de Clamınges, in treating of the Great Schism, attributes the evils which afflicted the church to the absorption of the nominating power by Rome. "Si ecclesia illa collationem omnium graduum ecclesiæ universalis nunquam sibi arrogasset cæterasque suis juribus universas ingurgitando ecclesias nequaquam exspoliasset, vel hoc schisma nunquam in illa exorturum fuisse vel non tanto saltem tempore perdurasse" (Nic. de Clamingiis Disput. super Materiem Concil. General. p. 45). And again "Omnium quippe ecclesiarum vacantium . . . jura et collationes sibi attribuerunt, electiones ipsas a sanctis olim patribus cum tanto vigilantia et utilitate institutas cassas atque irritas decernentes. Ut vel sic sua ulterius explere possent marsupia, ex omnique provincia Christiano nomine dedicata, molem auri atque argenti infinitam, ad suæ opus cameræ, sedula negotiatione congregare." Nic. Claming. de Ruina Ecclesiæ cap. v. (Von der Hardt, T. I. P. i. p. 9, 10). So thoroughly did the Holy See eventually monopolize this important source of wealth and influence that when at the council of Trent the Bishop of Cadiz, Nov. 30, 1562, ventured to remark that formerly some bishops had been consecrated without papal intervention, the Italian prelates stopped him with loud outcries and the stamping of feet, declaring him accursed and demanding that he should forthwith be handed over to the ecclesiastical tribunals for punishment (Le Plat Monument. Concil. Trident. VII. ii. 92).

Spain, indeed, had struggled lustily against the gradually increasing pretensions of the Holy See to control ecclesiastical preferment, and Enrique III. of Castile had even gone so far, in an edict of Jan. 24, 1396, as to threaten the penalty of death for all Spaniards who should apply to the papal court for nomination to Spanish benefices, but the papacy triumphed (MS. Bib. Reg. Hafniens. No. 216 fol.).

The evils thus inflicted on Christendom may be imagined from a complaint made by the council of Paris in 1528. The progress of Lutheranism had aroused the church to the necessity of reform, and one of the principal measures suggested by the council was to prohibit the ordination of unworthy clerks. To this there was the obstacle that those who were refused orders at home were in the habit of posting off to Rome,

Closely connected with the question of investitures was that of episcopal oaths of fidelity. In the formula provided for the Italian bishops, prior to the Iconoclastic schism, of the oath to be taken on their consecration, there is a clause by which they swore fidelity to the monarch, and the whole was strengthened by imprecating on themselves the fate of Ananias and Sapphira in case of infraction.[1] In the settlement of affairs under the Carlovingians the same reasons which enabled the sovereign to claim the right of confirmation warranted him also in demanding from the new incumbent the customary oaths that the power thus intrusted to him should not be used to the detriment of the state, as personified in the monarch. We have seen that Charlemagne and Louis exacted this even from the successor of St. Peter; that prelates of inferior grade were not exempted becomes, therefore, a matter of course. When, in 802, the emperor caused to be renewed the oath which his subjects had already taken to him as king, he directed that it should be administered to all, laymen and ecclesiastics, without exception; and, though bishops are not specifically mentioned, the fact that they were necessarily included is shown by an allusion to them in a similar precept by Pepin, King of Italy, some years previously.[3] The form was in no way less stringent than that of the oath taken by laymen, being a comprehensive homage to the person of the monarch, secured by the customary oaths on the gospels, or on relics of approved sanctity.[4] That its binding force was admitted on all hands is shown in the rebellion of 833, when even Gregory IV. felt obliged to exculpate himself from the charge of perjury for the part which

whence they returned endowed with all the orders at once. This council determined to resist, but without success (Concil. Paris. ann. 1528 can. vii. viii. Harduin. x. 1953).

[1] Lib. Diurn. Roman. Pontif. cap. III. Tit. viii.

[2] Capit. Carol. Mag. I. ann. 802 cap. 2.

[3] Capit. Pippini ann. 793 cap. 36.

[4] "Sic me Deus adjuvet et ista sancta patrocinia." See the oath extorted from Hincmar of Rheims—Hincmari Opp. I. 1125 (Migne's Patrol. T. 125).

he took against Louis after the oath of fidelity sworn at his installation, and he attempted to justify himself only by retorting on the Frankish bishops the charge of being really guilty of the same crime.[1] The church itself even recognized the episcopal dignity as held only in virtue of this homage, for we find the council of Aix-la-Chapelle, in 836, declaring that the violation of the oath shall entail the degradation of the offender and the forfeiture of his preferment.[2] In this the fathers of the council were merely recording the established usage, for in 794 a certain Bishop Peter, accused of treason, purged himself by the ordeal, and on thus proving his innocence it is related that he was restored by Charlemagne to the position of which he had been deprived.[3]

That Charlemagne, indeed, considered his bishops to be vassals in the same sense as secular dignitaries is shown by the expression which he habitually used when refusing their requests for some fragment of the possessions of the crown—"With such an abbey or such an estate I can secure the fidelity of a better vassal than that count or that bishop."[4] That, moreover, their sees were held on tenure as precarious as that of the secular nobles is shown by a story told by the Monk of St. Gall, to the effect, that he once ordered all the bishops of the empire to preach in their churches by a certain day, under penalty of dismissal and degradation. A bishop who felt his incompetency for the duty, and who, therefore, feared the loss

[1] "Subjungitis, memorem me esse debere jurisjurandi causa fidei factum imperatori. Quod si feci in hoc volo vitare perjurium . . . Vos tamen quia proculdubio jurastis et rejurastis, promittentes ei erga illum omnia fideliter vos agere, perjuri estis"—Gregor. PP. IV. de Comparat. Utriusq. Regim. (ap. Agobardi Opp.). The imperial party enunciated the rule in the clearest manner—"Episcopos in causa fidei jusjurandum præstare solitos imperatori" (Goldast. I. 188)—which perhaps indicates that the rebel princes were endeavoring to gain ecclesiastical support by favoring the pretensions of the church to independence.

[2] Concil. Aquisgr. II. ann. 836 cap. ii. can. 12. This declaration was probably called forth by the political reaction of 835.

[3] Capit. Carol. Mag. ann. 794 cap. 7.

[4] Monach. S. Gall. de Vita Caroli Mag. Lib I. cap. x.

of his episcopate, adopted an ingenious expedient to avoid the test, and suborned some courtiers to report in his favor to the emperor. The latter, however, discovered the deceit, but mercifully permitted him to retain his bishopric.[1]

Such being the recognized subjection of the prelates as vassals of the crown, doing homage for their sees, and liable to deprivation for infidelity to the sovereign, or for other cause at his pleasure, we see the completeness of the revolution when we find the Neustrian bishops, in their address to Louis le Germanique in 858, boldly declaring that, unlike laymen, they were not obliged to perform any act of homage or to take any oaths.[2] The effort was temporarily successful, for though, some fifteen years later, Charles forced the reluctant Hincmar of Rheims to corroborate his suspected loyalty by the oath which had not been exacted at his installation, yet the humiliated prelate had his revenge. He takes especial care to chronicle how, at the coronation of Louis le Bègue, in 877, the bishops merely performed commendation for the churches and promised fidelity, while the abbots and nobles commended themselves, and took the oaths prescribed by ancestral custom.[3] This pretension, however, was too directly opposed to the tendencies of the age, which was rapidly resolving all institutions into the nascent feudal system, to be permanently successful, though it was long and hotly contested. Yet the declaration of the bishops, in 858, was a correct index of their position at the time, and an example or two may serve to mark the practical advantages resulting to them within a few years. In 817, when Bernard of Italy made his fruitless revolt against his

[1] Monach. S. Gall. cap. xvi.—Licet indignum permisit retinere pontificatum.

[2] Capit. Carol. Cal. Tit. xxvii. cap 15. This claim was founded on the immunity from judicial and purgatorial oaths, which, on the authority of the False Decretals, ecclesiastics about this time endeavored to obtain (Gratian. Caus. ii. q. 5 can. 1, 2, 3—Pseudo-Cornel. Epist. 2). Promissory oaths, which the bishops thus refused, were, however, allowed (Gratian. Caus. xxxii. q. 1 can. 1).

[3] Annal. Bertin. ann. 877.

uncle, there was little ceremony shown in dealing with the prelates who were his confederates. Anselm of Milan, Wolwod of Cremona, Theodulf of Orleans, and other ecclesiastics who had participated in the rebellion, were deposed by a synod, though their dignity saved them from the personal punishment adjudged to the secular participants in the rebellion.[1] So, in 835, when Louis le Débonnaire was reinstated after the second revolt of his sons, the bishops of the defeated party were put on trial. The primatial dignity of Lyons could not preserve St. Agobard from degradation; the traditional veneration for St. Remi did not save his unworthy successor, Ebbo, while less distinguished prelates sought safety in flight.[2] On the other hand, when, in 859, Charles le Chauve demanded judgment against Wenilo, Archbishop of Sens, who, under circumstances of peculiar treachery, had been a leading instrument in the usurpation which for a moment placed Louis le Germanique

[1] Thegan. de Gest. Ludov. c. 22.—Eginh. Annal. ann. 818.—Annal. Vet. Francor. ann. 821. Theodulf languished in prison for many years, and was only released when Louis, in passing his place of confinement, was touched by hearing him sing a hymn of his own composition—"Gloria, laus, et honor tibi." In a poetical epistle addressed from his prison to Modoin, Theodulf emphatically asserts the irregularity of his confinement—

Servus habet propriam et mendax ancillula legem,
Opilio, pistor, nauta, subulcus, arans.
Proh dolor! amisit hanc solus episcopus, ordo
Qui labefactatur nunc sine lege sua;
Debuit et qui aliis legalia promere jura
Officii perdit jus, sine jure, sui.
Culpa facit sævum confessa perire latronem,
Non est confessus præsul, et ecce perit . . .
Non ibi testis inest, judex nec idoneus ullus,
Non aliquod crimen ipse ego fassus eram.
Esto: forem fassus cujus censura valeret
Dedere judicii congrua fræna mihi?
Solius illud Romani præsulis exstat
Cujus ego accepi pallia sancta manu.
Theodulph. ad Modoin.

It is observable that Theodulf does not disclaim responsibility, but merely that he had a right to trial by the pope on account of having received the *pallium*, of which more hereafter.

[2] Astron. Vit. Ludov. Pii ann. 835.

in possession of his brother's kingdom, the royal prosecutor could obtain no satisfactory action[1]—and the only punishment incurred by the traitor was the tradition which embalmed his name, in the Ganelon of the *chansons de geste*, as the embodiment of falsity.

While thus striking at all the principles which subordinated the church to the state, it must not be supposed that the sagacious originators of the movement had endeavored to create a body of irresponsible ecclesiastical despots, each supreme in his own diocese or province, to become eventually the priest-king of an insignificant territory. Even as the churchman was elevated above the layman, so was the power of the hierarchy developed in the comprehensive scheme of Ingilram and Isidor. Transmitting step by step the new powers thus acquired to the supreme head at Rome, the whole body of the church was rendered compact and manageable, either for assault or defence; and it acquired the organization which enabled it not only to preserve most of the advantages thus gained, but to extend in all directions its influence and authority. Had the bishops maintained their individual independence they could have accomplished nothing beyond the ends of personal ambition, as did the nobles who were then carving out their hereditary fiefs; and even this success would have been temporary, for, in their isolation, they would have succumbed one by one under the attacks of the rapacious barons who wielded the military power of their provinces. What the temporal sovereign lost, however, was transmitted through the hierarchy to the pope, and the church acquired the unity which was requisite to carry it through the stormy centuries to come.

[1] Annal. Bertin. ann. 859.

THE PAPACY AND THE CHURCH.

The rise of the Papacy, from the persecuted head of an insignificant local church to the supreme domination over both the spiritual and the temporal hierarchy of Europe, is one of the most curious problems in history. One element in its solution I have already endeavored to elucidate by showing how the church acquired control over the state, and it remains to see how the Pope became supreme over the church.

When the primitive Christians found that the increase of the faithful began to render some form of internal organization requisite, they naturally divided themselves into sections, corresponding with the great prefectures of the empire, and these were arranged into provinces according to the civil demarcations, the seat of local government being the head of the local church.[1] As the complexity of the system increased with the number of converts, there thus arose throughout the East a complete hierarchy of bishops, metropolitans, and exarchs or patriarchs, which varied as the political divisions of their territories were altered; and so complete was the dependence of ecclesiastical arrangements upon the order of civil government, that, as late as 451, the council of Chalcedon directed that changes in the civil hierarchy should be conformed to by corresponding alterations in the constitution of the church.[2] With all this, however, a certain undefined primacy of honor was assigned from a very early period to the three apostolic sees of Rome, Alexandria, and Antioch.

Rome was thus most favorably situated for vindicating whatever pretensions she might advance of control over her sisters. Until the erection of a new imperial city at Byzantium, she combined the claims of the seat of government with the traditional episcopate of St. Peter, and almost from the beginning her bishopric was the most important and influential in the

[1] Concil. Antioch. ann. 341 can. 9. [2] Concil. Chalced. can. 17.

Christian world. The number and character of her church members would generally lead to the selection of the ablest of the Western Christians to her episcopal chair, and these successive bishops, from the weight of their personal character, would transmit a gradually increasing influence. The centralization of wealth in the Eternal City would also render the Roman see by far the richest in Christendom, and its gold was liberally poured forth, during the whole of the first three centuries, in assisting poorer communities[1]—a munificence which could not be solicited or enjoyed without an appreciable sacrifice of independence on the part of the recipients. Yet the account given us by Hippolytus, Bishop of Portus, of his long controversy with Pope Calixtus I., shows that the Bishop of Rome, in the commencement of the third century, had no recognized supremacy even over the suburbicarian sees;[2] and though, not long before, Irenæus had declared the Roman see to possess a "potiorem principalitatem" in the church, owing to the directness of its apostolical tradition from Peter and Paul,[3] yet his account of the debates between Polycarp and Pope Anicetus respecting the observance of Easter shows that this was merely a primacy of honor, and not of authority.[4]

In the early period of the ecclesiastical commonwealth it was customary for men eminent in station or piety to address epistles, hortatory or advisory, to other churches, either on general subjects of faith or discipline, or on special questions which presented themselves; and, in time of difficulty, prominent bishops were frequently appealed to for advice or assistance in the settlement of doubts. In the second century we find Dionysius of Corinth thus volunteering without hesitation

[1] Euseb. Hist. Eccles. Lib. IV. c. 23; Lib. VII. cap. 6.—To the liberality recorded in the latter reference may perhaps be attributed the submission of the Eastern churches to the wishes of Rome in the vexed question of the rebaptism of heretics.

[2] Hippolytus, Refutation of Heresies, Bk. IX. chap. vii.

[3] Irenæi adv. Hæres. Lib. III. cap. iii.

[4] Euseb. Hist. Eccles. Lib. V. c. XXIV.

his counsel to distant communities, and even addressing Soter of Rome in terms which manifest the perfect equality existing between them.[1] A century later, when Marcion of Arles became infected with the Novatian heresy, Faustinus of Lyons writes repeatedly to St. Cyprian of Carthage and to Stephen I. of Rome, imploring their interposition, and Cyprian, in an epistle to Stephen, urges him to join in counselling the flock of Marcion to unite in electing another bishop in his place.[2]

In these transactions we see the gradual crystallization of the hierarchical elements. The influence which the more important churches thus exercised over those in no way subjected to them is clearly manifested, and we cannot wonder that the civil predominance of the imperial city should at an early period have caused its bishops to be selected as arbitrators or advisers in difficult conjunctures. The talents and energy of Cyprian give a momentary prominence to his province, personal, however, in its nature, and dying with him. Rome, on the other hand, has certain undefined and impalpable claims to superiority, not clearly understood at home or fully recognized abroad—disregarded by a man like Cyprian, secure in his own force and that of the powerful African church, but yet imposing a certain claim to respect on weaker prelates and communities. Yet such assumptions of superiority were watched with jealousy, and were frequently repudiated. When Victor I., towards the close of the second century, endeavored to excommunicate the Asian bishops for the irregularity of their solemnization of Easter, his threats were set at naught, and the other churches interfered in the quarrel in a manner showing that entire equality existed between them. Irenæus, whose reputation was commanding throughout Gaul, wrote to Victor a letter of reproof and exhortation, which presupposes that there was no pre-eminence in the see of Rome.[3] In 269, when the council of Antioch deposed Paul of Samosata, the epistle

[1] Euseb. Hist. Eccles. Lib. IV. c. 23.

[2] Cypriani Epist. 66 (Ed. Oxon.).

[3] Euseb. Hist. Eccles. Lib. V. cap. 24.

in which the result was announced to the Christian world shows that Dionysius, the existing pope, while named first, as in courtesy to his position in the capital, had no special influence or authority.[1] The superscriptions of Cyprian's epistles—"Cyprianus Cornelio fratri salutem"—manifest perfect equality, and contrast strangely with the "debitam obedientiam et subjectionem" of the mediæval period; and as late as 380 we find Sulpicius Severus speaking of Pope Damasus and St. Ambrose of Milan as the two bishops who were then of greatest weight in the church—apparently not recognizing that one could have any definite authority over the other.[2]

Yet, even under the pagan emperors, the position of the Roman bishops near the imperial court gave them constant opportunities of acquiring influence, as was manifested when Paul of Samosata refused obedience to the decree of the council of Antioch, and persisted in maintaining his position despite the appointment of a successor. Finding it impossible to dislodge him, the church finally appealed to Aurelian, whose triumph over Zenobia had deprived Paul of his protectress. Aurelian contented himself with ordering that the position should be given to that one of the contestants who was approved by the bishops of Rome and of Italy[3]—through whom the appeal had doubtless been made. The pagan Cæsar could scarcely comprehend subtle disputations on the nature of Christ, but he could readily appreciate the importance of extending Italian influence throughout the recently disturbed East. From this it is fair to presume that if protection was to be sought from local persecution, exemption to be solicited from unjust or oppressive burdens, or other favor to be procured from the im-

[1] The epistle is addressed "Dionysio, Maximo, et omnibus ubique in orbe terrarum collegis, episcopis, presbyteris, diaconis et universæ et catholicæ sub cœlo ecclesiæ" (Ejusd. Lib. VII. cap. 30). Maximus was Bishop of Alexandria, which, with Rome and Paul's own city of Antioch, constituted the three apostolic sees.

[2] Hist. Sacræ Lib. II. cap. 48.

[3] Euseb. Hist. Eccles. Lib. VII. cap. 30.

perial court, the Bishop of Rome would be the natural channel through which the suppliants would address their master. Indeed, this was laid down as the rule of the church under the Christian emperors, for the council of Sardica, in 347, adopted a canon directing that any prelate visiting Rome to obtain a favor from the civil government should present his request through the hands of the Roman bishop;[1] and when Constantinople rose into power, the rule was established that no bishop could obtain an audience of the emperor without the intervention of the patriarch of the New Rome.[2]

As the Roman church thus was the official mediator between her sisters and their master, the relations thence arising tended inevitably to render her the protector of her nominal equals. When, therefore, she proffered advice, it was not lightly to be rejected, for the next hour might render her intervention necessary or her benevolence invaluable; and if her tone gradually grew authoritative, and counsel imperceptibly assumed the form of command, she was but yielding to temptations irresistible to human nature. A passage in Tertullian shows that this took place at an early period, and also that it was regarded as a usurpation founded on no acknowledged right;[3] but such assertions of independence only prove the progress making by the silent encroachments of centralization.

Yet still the theory of church government continued to be that of perfect and independent autonomy in each circumscription. By the Apostolic Canons, framed towards the end of the third century, each province is directed to determine for itself which of its churches shall be deemed to hold the primacy; the bishops are ordered to supervise the local concerns of their sees, while the primate is instructed to consult his suffragans in all important matters, no reference being made to

[1] Concil. Sardicens. can. 9.

[2] Hormisdæ PP. Epist. 2.

[3] Audio etiam edictum esse propositum, et quidem peremptorium: Pontifex scilicet maximus, episcopus episcoporum dicit, ego et mœchiæ et fornicationis delicta pœnitentia functis dimitto.—Tertull. de Pudicit. c. 1.

any power outside of his patriarchate.[1] This continued, nominally at least, for some time after Christianity became the religion of the state. In 341 the council of Antioch substantially repeats these regulations, as the ancient rule of the fathers;[2] the second general council, held at Constantinople in 381, expressly forbids any prelate from interfering with the concerns of his brethren;[3] and in an ancient Arabic version of the Nicene canons there is one which, though not attributable to that council, still doubtless represents the ecclesiastical organization of an early period. It makes each patriarch supreme in his own province, and strictly forbids any one from intervening in the concerns of other provinces, unless specially invited to arbitrate in cases of difficulty; and when complaints arise against the patriarchs themselves, on account of either their conduct or faith, it directs the question to be settled in a council of the provincial bishops and abbots.[4]

No sooner, however, did the church emerge from persecution into power, than the necessity was felt of some central authority if its unity was to be preserved. The dissensions of the Arian controversy showed this, and Constantine endeavored to supply the want by assembling the council of Nicæa. General councils, however, were only suited for great occasions, and not for the continually arising emergencies which called for authoritative settlement; and Rome, in the stormy epoch of the Arian heresy, made good use of her vantage-ground to assume the position of an arbiter for the whole church. Steadfast in her orthodoxy she represented Latin Christianity, which found little attraction in the subtle theological speculations so dangerously enticing to the Eastern churches, and she thus was the haven of refuge for the persecuted trinitarians of Greece and Asia, whom she boldly stood forward to protect. Yet the clearer heads among the Greeks foresaw the result of this and strove to check it, as when St.

[1] Canon. Apost. No. 35. [2] Concil. Antioch. ann. 341 can. 9.
[3] Concil. Constantinop. ann. 381 can. 2.
[4] Sanct. Patrum CCCXVIII. Const. xv. (Harduin. I. 503.)

Basil dissuaded Gregory of Nazianzum from appealing for support to Rome in one of the phases of the contest; and the contemptuous way in which the saint speaks of the Latin church shows how little respect it had won, even among the orthodox, by its vigorous upholding of St. Athanasius.[1] Notwithstanding this warning, the bold stand made by Rome under the Arian persecution gave her unquestioned prominence, and the churches which sought her assistance in the hour of trial could not do so without a sacrifice of independence. Thus when the Latin half of the council of Sardica, in 347, endeavored to protect themselves from the assaults of their Eastern brethren, they constituted Julius I. an arbiter to grant appeals in cases of condemnation, feeling secure that so orthodox a pontiff would not allow the wicked to triumph. The language of the canon shows this to have been a novel privilege, conferred temporarily of their own free will;[2] and it doubtless consoled the pope for the denunciations launched against him by the Eastern portion of the synod, though neither he nor the Sardican fathers could anticipate the immense jurisdiction which in the course of ages would be erected on so narrow a foundation.

The perverse ingenuity of Greek theologians continued to discover fresh points of debate in Christian doctrine, and gave to Rome the opportunity, always improved to the utmost, of again and again intervening, on each occasion with a more decisive air of authority, as the combatants eagerly sought her alliance in their internecine strife. Meanwhile a new element was introduced into the organization of the church, which,

[1] Quale nobis auxilium ab Occidentalium supercilio et fastu aderit? Qui veritatem neque norunt neque discere sentiunt, verum falsis opinionibus præpediti, illa nunc faciunt quæ prius in Marcello patrarunt.—S. Basil. Epist. 10 (ap. Chr. Lupi Dissert. de Synod. Sardicens. cap. 6. Opp. I. 325).

[2] Si vestræ dilectioni videtur, Petri Apostoli memoriam honoremus ut ab iis qui judicaverunt scribatur Julio Romanorum episcopo.—Synod. Sardicens. can. 3, 4, 5.

paradoxical as it may seem, served to give her an additional chance of humbling her sisters—the erection of the rival patriarchate of Constantinople.

The council of Nicæa, in recording the ancient custom of the church, assigned the highest rank to the apostolic sees of Rome, Alexandria, and Antioch, but reserved to every province the due privileges of its own church.[1] There is here no mention of Constantinople, but the imperial city, so rapidly growing on the shores of the Bosphorus, was not long content to remain in subjection to the province of Thrace, and it speedily aspired to the primacy of the East. Accordingly at the second Œcumenic Council, held at Constantinople in 381, a new declaration was made, in which, after reciting the names of the great provinces of the church—Alexandria, the East, Antioch, Asia, Pontus, and Thrace—it adds that the Bishop of Constantinople has the primacy of honor after the Bishop

[1] "Antiqua consuetudo servetur per Ægyptum, Libyam et Pentapolim, ita ut Alexandrinus episcopus harum omnium habeat potestatem; quia et urbis Romæ episcopo parilis mos est. Similiter autem et apud Antiochiam, cæterasque provincias, suis privilegia serventur ecclesiis."—Concil. Nicæn. can. 6. I give the version of Dionysius Exiguus, as the one authorized by Rome in the sixth century. The earlier one of Rufinus (Hist. Eccles. Lib. I. cap. 6) is even less favorable to Rome—"Et ut apud Alexandriam et in urbe Roma vetusta consuetudo conservetur, ut vel ille Ægypti vel hic suburbicariarum ecclesiarum sollicitudinem gerat." We shall see hereafter that Leo I. endeavored at the council of Chalcedon to substitute a supposititious canon, but the attempt was abandoned.

It is rather curious that the forged donation of Constantine, fabricated in the eighth century, should contain a special grant to Rome of supremacy over the churches of Alexandria, Antioch, Jerusalem, and Constantinople. That supremacy was thus attributed to an earthly power, and not to primitive tradition or to the primacy of St. Peter, and it was admitted, even at that day, that forgery was necessary to substantiate a claim for which at the same time an antiquity coeval with the Christian religion was assumed. Wickliffe was shrewd enough to see the incompatibility of this with the power asserted to be derived from Christ through St. Peter—"Certum videtur ex chronicis quod non a Christo sed a Cæsare Constantino Romanus episcopus accepit vel usurpavit potestatem."—Univ. Oxon. Litt. de Error. Wicklif. art. 114 (Wilkins Concil. III. 344).

of Rome, because his city is the New Rome;[1] but still no interference is to be allowed with the autonomy of the several provinces.

As the bishop of the imperial city was the pastor and spiritual director of the emperor, and as the emperor was the suzerain who was all-powerful in deciding religious quarrels and civil and criminal cases, it will readily be perceived what ample opportunities the bishops of Constantinople enjoyed, when they chanced to be on good terms with their masters, of extending their influence over their older rivals.[2] Of this they made good use, and the upstart church became the common centre of attack by all the venerable prelates of the East. In this Alexandria, the most powerful and wealthy, was the leader, and Theophilus, Cyril, and Dioscorus filled the first half of the fifth century with their ceaseless assaults on St. John Chrysostom, Nestorius, and Flavianus, whose principal fault was that their see was rapidly overshadowing the influence of the traditional apostolic churches. This rivalry furnishes the key of the disgraceful contests which constitute the ecclesiastical history of the time, and we shall see presently how frequent and how useful were the opportunities which it offered to Rome, as each rival sought her alliance in the effort to crush its antagonist.

It was a time of confusion when ambitious men were striving on every hand to extend their power, and a minor quarrel which was in progress between Jerusalem and Antioch well illustrates the reckless temper of the period and the eagerness to attribute to Rome any prerogative which might seem to serve the interest of the moment. Juvenal of Jerusalem was anxious to emancipate his see from the supremacy of Antioch, and even entertained a wild hope of subjecting the latter to his power when the Patriarch John of Antioch embraced the

[1] Verumtamen Constantinopolitanus episcopus habeat honoris primatum post Romanum episcopum; propterea quod urbs ipsa sit junior Roma.—Concil. Constantinop. I. can. 2.

[2] Chr. Lupi Append. ad Ephesin. Latrocin. cap. 3 (Opp. II. 255).

cause of Nestorius at the council of Ephesus in 431. He accordingly insisted that John should purge himself before the Bishop of Rome of the crimes imputed to him, and alleged ancient custom in behalf of this demand.[1] The falsity of this was shown by the absence of any effort on the part of the offending patriarch to propitiate Pope Celestin, and by the final patching up of a reconciliation between him and Cyril and the withdrawal of mutual excommunication, without any reference of the matter to Rome. Yet Juvenal further endeavored to associate his own see with that of Rome as possessing jurisdiction over Antioch, and, according to Leo the Great, sought to substantiate his claims by producing forged documents in the council.[2]

For a time Alexandria triumphed. Theophilus enjoyed the satisfaction of seeing Chrysostom banished, and the high-handed proceedings of Cyril at the council of Ephesus procured the condemnation of Nestorius. His successor Dioscorus, even more reckless, contrived, with the aid of intrigues in the imperial court, so to engineer the Robber Synod of Ephesus in 449, as to proclaim the orthodoxy of the heretic Eutyches and to inflame the bishops to the murder of the Patriarch Flavianus. Flushed with these successes, Alexandria threatened soon to contest supremacy with Rome. At the Robber Synod Dioscorus presided, under imperial command, though the legates of Leo were present,[3] and soon after the rivals exchanged excommunications; but Dioscorus had been too violent. The rising influence of Alexandria forced Rome and Constantinople into alliance. A change of emperors deprived Dioscorus of support in the palace, and when the council of Chalcedon assembled in 451, all united eagerly in his downfall, after which we hear little of the Alexandrian church. Constantinople at last was in the ascendant, and was little disposed to gratitude towards Rome for her assistance in

[1] Concil. Ephesin. Act. IV. (Harduin. I. 1490.)

[2] Leon. PP. I. Epist. CXIX. cap. 4.

[3] Concil. Chalced. Act. I. (Harduin. II. 79.)

the hour of trouble. Against the protests of the Roman legates a canon was adopted which gave her the supremacy of the Eastern churches and placed her on an equality with Rome, alleging as a reason that both were imperial cities.[1] This struck at the root of the papal claims, as it not only created a co-equal, but declared that the prerogatives of Rome were based on civil and not on divine attributes, and it was to the last degree distasteful. Something of the kind apparently had been anticipated, for Paschasinus, the representative of Leo, was provided with a version of the Nicene canon which conceded to Rome undisputed primacy, but when he produced it, he was met by the Eastern bishops whose copies of the canons contained nothing of the kind,[2] and the forgery was tacitly conceded by Rome, for Leo's version never has since been embodied in the authorized collections of canons.[3]

The council, however, incidentally bestowed upon Leo the title of Œcumenic Patriarch, but such consolation as he might derive from this was neutralized by its being given indifferently, for a century and a half, to the bishops both of Rome and Constantinople, without attracting special attention, and Justinian habitually uses it when addressing the Patriarch of Constantinople, thus showing it to be his official title.[4] At length the jealousy of Rome was excited, when, in addition to other movements looking to universal domination befitting the name, John the Faster formally assumed it at the council of Constantinople in 587, and Pelagius II. and Gregory the Great protested vigorously against it. The Constantinopolitans were obdurate, however, and persisted in using a title which gratified their vanity, notwithstanding the arguments of Gregory, who did not assume that it was the prerogative of Rome, but remonstrated that it could properly be bestowed on Christ alone; and his proud humility bequeathed to his successors the

[1] Concil. Chalced. can. 28.

[2] Concil. Chalced. Act. XVI.

[3] Chr. Lupi Schol. ad Can. Nicæn. VI. (Opp. I. 244.)

[4] Novell. VI. VII.

well-known formula of "the servant of the servants of God." Yet in his earnest entreaties to his patriarchal brother not to usurp so proud and so foolish an appellation, and in his arguments to prove the equality of all bishops, it is not easy to recognize the representative of a see which for centuries had lost no opportunity of arrogantly asserting its domination over sister churches.[1]

While the Papacy had thus virtually failed in its efforts as respects one-half of Christendom, it had been more successful with the other half. Western Europe had no Apostolic sees and no imperial city to rival and to counterbalance the influence of the mistress of the world. In Spain, Gaul, and Britain there seem to have been no recognized primacies, and various provinces arrogated to themselves and contested with one another a transient superiority, as the vicissitudes of personal influence or political fortune afforded them the opportunity. The prominence of Rome as the seat of government, however, insensibly led them to recognize an uncertain degree of authority as inherent in the Eternal City. Africa, under the lead of Carthage, by turns yielded a qualified obedience to, or asserted independence of, Rome, as the policy of the moment was dictated by internal or external pressure. Italy was divided into two vicariates, of which Milan ruled the northern, and Rome the southern; and so precarious was the general supremacy of the latter, that from the sixth to the eighth century the archbishops of Ravenna affected airs of equality, in consequence of the residence of the imperial exarchs in that city, which Adrian I. could not overcome until he had called

[1] Gregor. PP. I. Regest. Lib. v. Epist. 18, 20, 21, 43; Lib. VII. Epist. 4, 27, 31, 33, 34; Lib. IX. Epist. 68.

It was shortly after this, in 607, that Boniface III., taking advantage of a favorable political conjuncture, obtained from the usurper Phocas a recognition of the supremacy of Rome over Constantinople (Anastas. Biblioth. No. 68). This, however, was not long submitted to, and in 692 the *Quinisext in Trullo* repeated the canon of Chalcedon, declaring that Constantinople was equal in privileges though next in rank to Rome (Can. 36).

in the omnipotent arm of Charlemagne;[1] while as late as the eleventh century the Milanese clergy, appealing to the old traditions of their church, disclaimed the authority of the popes, set them at defiance, and were forced to abate their pretensions only after a desperate war of nearly thirty years.

As the Arian controversy and the deplorable dissensions of the Eastern churches gradually enabled Rome to assume the tone of a mistress, she naturally sought to make her power felt throughout the West as well as the East. Towards the end of the fourth century the decretals of Siricius show the rapid strides of centralization. A local synod of Rome, such as that of 384, assumes to lay down rules for the governance of the church at large. Prelates in Gaul and Spain apply to Rome for the solution of their doubts, and receive the reply as final. The popes, as the mouthpiece of the synods, announce the decisions to the Christian world, and undertake to see to the execution of the canons promulgated. The high and overbearing spirit of Innocent I. lent a powerful impulse to this tendency. In 416 he sharply reproves Aurelius of Carthage for the admission of unworthy men to bishoprics in the African church, peremptorily orders the discontinuance of the abuse, and commands that the missive be read in all the churches. Its whole tenor is that of a superior discharging his duty in enforcing the law upon his inferiors.[2]

Not long after this we find the historian Socrates complaining that the bishop of Rome was imitating his brother of Alexandria in efforts to supplant the temporal authorities.[3] The Alexandrian church, indeed, under the lead of the fiery Cyril, was making rapid strides to independence and supremacy throughout Egypt and the neighboring provinces. With his body-guard of turbulent clerks, and with the savage hordes of Nitrian anchorites at his command, Cyril lorded it over the

[1] Cod. Carolin. cap. liii.

[2] The genuineness of this epistle has been questioned, but Jaffé considers it authentic.—Regesta p. 26.

[3] Socrat. Hist. Eccles. Lib. VII. cap. 11.

city, and reduced the Imperial Prefect, Orestes, to a subordinate position.[1] The revolution which he thus organized was attempted by his successor Dioscorus; his lawless acts were unrepressed, and he ventured openly to assert that the imperial authority in Egypt was subordinate to his own,[2] while the spiritual tyranny that had been erected throughout the province is manifested when, after his fall in the council of Chalcedon, the Egyptian bishops piteously entreated to be allowed not to subscribe to the orthodox profession of faith, since if it should prove unacceptable to the future patriarch of Alexandria, they would all spend the rest of their days in exile.[3] They evidently felt that neither the empire nor the church at large could afford them protection.

Warned, perhaps, by the fate of Dioscorus, the successors of St. Peter prudently abstained from trespassing further upon the temporal power, but they continued to imitate the Alexandrian prelates in extending and confirming their spiritual domination, until, in 495, Gelasius I. was emboldened to assert it in the most unqualified terms, as the direct prerogative of St. Peter and his successors;[4] and when, in the following year, Anastasius II. announced his election to the Emperor Anastasius, he coupled a request for the imperial assistance with a declaration of the same nature.[5] This was not, however, in all cases tamely submitted to, and occasionally the old spirit of independence would burst forth, as when, in 550, the African church launched the thunder of excommunication against Pope Vigilius for his unworthy conduct in reference to the Three Chapters.[6] The quarrel between Rome and Constantinople over the churches of Illyricum, including those of Macedonia and Greece proper, affords another instance of a rebuff administered to the aspiring

[1] Socrat. Hist. Eccles. Lib. VII. cap. 13, 14, 15.
[2] Libell. Sophronii ap. Concil. Chalced. Act. III.
[3] Concil. Chalced. Act. IX. (Harduin. III. 418–9.)
[4] Gelasii PP. I. Epist. 13.
[5] Anastasii PP. II. ad Anastas. Imp.
[6] Victor. Tunenens. Chron. ann. 550.

spirit of the Universal Bishop. Though they were undoubtedly at one time included within the jurisdiction of the popes, yet as the influence of the Western Empire declined, the Roman prelate gradually lost his hold, and as early as 421, a rescript of Theodosius the Younger transferred them to Constantinople in terms which mark the pretensions of the upstart patriarchate to succeed to the waning power of the rival city.[1] Yet Rome did not willingly surrender her rights, until at length a fruitless struggle of three centuries ended in transferring to the Eastern metropolis the prerogatives once enjoyed by the West, and Leo the Isaurian was, in this at least, able to wreak his vengeance on the intrepid Gregory II.

In the vicissitudes of this long contest for supremacy, the main reliance of the popes was the universal jurisdiction which they arrogated to themselves over the Christian church. If it could once be fairly established that all sentences on ecclesiastical offenders were liable to revision and reversal at the hands of the successor of St. Peter, he became at once the custodian of the canons and the sole and irresponsible arbiter of all questions, with a corresponding right to interfere in every transaction affecting the internal government of the church— a power which in skilful hands was limited only by the moderation of the possessor.[2]

In the earlier ages of the church this appellate power had no existence. The ecclesiastical sentence of excommunication could be removed by him only who had pronounced it, until the

[1] Lib. XVI. Cod. Theod. Tit. ii. l. 45.

[2] It is upon this appellate power that the pretensions of the Roman see to supremacy are founded. In a report of an interview held May 16, 1869, between the Patriarch-elect of Alexandria and the Roman Catholic Bishop of the same see, commissioned by the pope to invite him to the approaching œcumenic council, the papal representative asserted the sovereignty of Rome by alleging its supreme jurisdiction—"Ma che il Papa è il capo delle chiese è reso chiaro dal fatto che, in caso d'appello, si ricorre a lui come giudice; il diritto di guidicare gli appelli comprende naturalmente la supremazia."—L'Emancipatore Cattolico, 5 Giugno, 1869.

council of Nicæa established courts of appeal by ordering the assembling of semi-annual synods in each province to examine into the cases of those who might consider themselves unjustly treated.[1] That Rome originally made no attempt to assert a superior jurisdiction is shown by the story of Marcion the heresiarch, about the year 150. While leading an ascetic life as a hermit, he fell from grace, and committed the heinous offence of seducing a virgin, for which he was promptly excommunicated by his father, a bishop of high repute. It is evident that already the influence of the Roman church was widely extended, when Marcion sought the imperial city and asked to be admitted to communion; but it also shows that Rome claimed no supervisory power when the request was refused—"We may not do this without the permission of your venerable father. We are one in faith and goodwill, and cannot place ourselves in opposition to our good brother."[2]

A hundred years later we find the papal court considerably advanced in its assumptions of appellate jurisdiction, though the rest of the church was as yet by no means prepared to submit to them. In 253 two Spanish bishops, Basilides and Martial, were deposed and excommunicated for idolatrous practices and other offences, and their places were regularly filled. Basilides, in fact, had confessed his errors, had voluntarily resigned his see, and had expressed his gratitude for admission to lay communion. Yet he proceeded to Rome, where he prevailed upon Stephen I. to receive him into full communion, and both he and his partner in guilt claimed restoration to their episcopal positions. This shows the influence which Rome was rapidly attaining, but the resistance offered proves that its supremacy was not recognized. The African church, moreover, took alarm, and urged its Spanish sister not to yield to the usurpation. In the name of the African bishops, St. Cyprian addressed a letter to the Spanish churches in which he not only assumed that the action of Stephen was null and void, but that Basilides had

[1] Concil. Nicæn. can. 5.

[2] Epiphan. Panar. Hæres. 42.

greatly increased his crime by deceiving the ignorant Roman bishop, who was less to blame for his negligence than was Basilides for his cunning. He declared that they are worthy of death who thus offer an illegal communion to unrepentant sinners, and he wound up by exhorting the Spaniards to stand firm and not to join in the sacrilegious communion of their profane and disgraced bishops.[1] It would be difficult to conceive of a more complete denial of all power on the part of Rome to revise the proceedings of her sister churches.

This was not the first time that Cyprian had been called upon to rebuke the encroachments of Rome, which he did with a fearless spirit, though he acknowledged a primacy of honor in the see of St. Peter and deemed it the source of catholic unity. In 251 a Carthaginian deacon named Felicissimus lapsed from the faith under persecution, and when his restoration was sternly refused by Cyprian he appealed to Pope Cornelius, whom he endeavored to overawe with a crowd of graceless wretches carried to Rome for the purpose by his friend Fortunatus. Cyprian with little ceremony reproached Cornelius with having been intimidated by these worthless characters, and protested against any revision of a sentence legally rendered by local bishops, who had the advantage of ample evidence on the spot, and thus he formally condemned any attempt by a criminal to seek a foreign jurisdiction.[2]

It is true that the dignity of Rome might occasionally cause its bishop to be chosen as judge in special cases, as when Constantine nominated Pope Melchiades to preside over a tribunal for the trial of Cæcilianus, Bishop of Carthage;[3] but the rescript of the emperor shows that this was a position conferred by him in a particular instance and not a prerogative inherent in the Holy See. The Nicene canon, already alluded to, proves that in ordinary cases the only appeal lay to a provincial synod. When bishops were concerned, the regulations of

[1] Cypriani Epist. 67. (Ed. Oxon.)

[2] Cypriani Epist. 59.

[3] Euseb. Hist. Eccles. Lib. x. cap. 5.

the council of Antioch declare that the unanimous condemnation of a bishop in his local synod cannot be revised elsewhere, while the careful provision for the different cases that might arise shows that the customary appeal was to the emperor, and that no ecclesiastical power existed superior to the synod.[1]

It probably was not found easy in practice to assemble the semi-annual synods established by the Nicene canon, and some other device was requisite to neutralize the constantly increasing abuse of the sacerdotal power. The council of Sardica, in 347, therefore, provided that if a bishop, through anger, should unjustly deprive any of his clerks of communion, the latter might appeal to the metropolitan of the province, or, in his absence, to the metropolitan of the adjoining province.[2] There is evidently, thus far, no thought of erecting a court of first or last appeal in Rome; and yet this same council of Sardica, in its eagerness to find some mode of escape from the persecution of the Arians, invoked the assistance of Pope Julius in a manner which, cautious and restricted though it was, has served as the foundation for the overshadowing supremacy of the Roman see.

That the Sardican canons were adopted temporarily and for a special purpose is evident both from their provisions and from the manner in which they long continued to be treated. The appeal which they create is to Pope Julius personally, and not to the Bishop of Rome, as though the Latin churches wished to secure mutual aid in an immediate danger, without instituting a permanent custom; and, moreover, the only intervention which they prescribe is that, if a bishop considers himself unjustly condemned, the case may be submitted to Julius, who can either confirm the judgment or send legates to the spot where a new trial may be had.[3] The council seems

[1] Concil. Antioch. ann. 341 can. 4, 12, 14, 15.

[2] Concil. Sardicens. can. 17.

[3] Concil. Sardicens. can. 3, 4, 7. What are called the canons of the Sardican council seem rather to be minutes of its proceedings; and of the three canons quoted here, the first is the only one of which the adop-

to have foreseen the evil of allowing appeals to a distant point, and to have guarded carefully against the danger of such abuse of the power which it was granting. The establishment of such authority, to be wielded by an irresponsible court in far-off Rome, was a later assumption, which practically gave to the prerogative its immense power for evil.

That these canons passed completely from memory with the exigency which caused their adoption is evident from an epistle addressed to the Emperor Gratian by the council of Rome in 378, entreating him to put in force a rescript by which he had granted appellate power to the Roman church in the existing troubles—a rescript which had met with scant observance.[1] Similar proof is afforded by the provisions of the second œcumenic council, held in Constantinople in 381, which recognizes no appeal from the synod of the province, and expressly orders that none should be made.[2] How little the popes themselves believed that they were invested with any general appellate power, even when specially called upon, is shown in the case of Bonosus. Accused of an error of faith respecting the perpetual virginity of the Mother of Christ, his trial was referred by the council of Capua, in 389, to Anysius, Archbishop of Thessalonica, and the Macedonian bishops. These applied to

tion is recorded. The matter apparently led to some debate, and after the adoption of canon 3, offered by Osius, Gaudentius added a proposition looking to the new trial being held in Rome, and designed to protect the interest of the condemned bishop during his absence. This apparently was not passed, and then Osius suggested the seventh canon, which prescribes that the second trial shall be held on the spot, permitting the pope, if he thinks fit, to send deputies to assist as assessors. The whole is evidently an attempt to frame some new device by which to meet a new danger, and not a record of a pre-existing custom.

At the most, the whole only represents the action of the Latin half of the council after it had quarrelled and divided, and but for the use subsequently made of the canons by Rome they would be unworthy of consideration.

[1] Concil. Roman. ann. 378 (Harduin. I. 840–1).

[2] Concil. Constantinop. I. can. 6. From the tenor of this canon it is evident that appeals were customarily made to the secular power.

Pope Siricius for his judgment. Siricius was usually not backward in extending the prerogatives of his see, and yet he declined, on the ground of incompetency, to entertain the question, and told the applicants that they alone could decide it.[1] So a law of Arcadius and Honorius, in 400, providing penalties for bishops who refused to submit to sentences of deposition regularly pronounced by the neighboring prelates, makes no allusion to any appeal or reference to Rome.[2]

It is true that Baronius produces, from the inexhaustible storehouse of the Vatican, a rescript of Gratian and Valentinian, dated in 381, directing that the decisions of the Roman bishop, acting with seven others, shall be final; that metropolitans shall of necessity be judged by the pope, and that, when the provincial judges are liable to suspicion, the accused may demand to be tried by the pope, or by fifteen neighboring bishops; but that this change of venue had to be made before the trial, as no appeal from or revision of a sentence is allowed.[3] This was probably issued in response to the request of the synod of 378; it cautiously withholds all appellate power, and the restricted jurisdiction which it bestows is merely a temporary one, granted as a relief to themselves by princes wearied with the internecine strife between Damasus and his unsuccessful competitor Ursinus, and bewildered with the ceaseless wrangling of the Arian controversy, for the canons of the council of Constantinople in the same year show how anxious were the secular authorities to escape from these perplexities. That it could only have possessed temporary validity, is shown by its omission from the Theodosian code, and the conflicting tendency of subsequent legislation. If genuine, moreover, it proves

[1] "Advertimus quod nobis judicandi forma competere non possit . . . . vestrum est igitur qui hoc accepistis judicium, sententiam ferre de omnibus, nec refugiendi vel elabendi accusatoribus vel accusato copiam dare." In the text of this epistle as given by Batthyani (Legg. Eccles. Hung. T. I. p. 210) the "non" is omitted from the first clause of this sentence, but the context shows that this reading is an error, and the authorized editions give it as quoted. Cf. Harduin. I. 859; Jaffé Regesta p. 21.

[2] Lib. XVI. Cod. Theod. Tit. ii. l. 35.

[3] Baron. Annal. ann. 381 No. 2–7.

that the Sardican canons had not succeeded in conferring any permanent appellate jurisdiction on the Roman court.

It is almost a work of surplusage to pursue further the proof of the worthlessness of those canons as the basis of the supervisory power of Rome; and yet another instance, fully as conclusive, may be cited. St. John Chrysostom, when the illegal synod *ad Quercum* deprived him of the see of Constantinople, never thought of appealing to the friendly Innocent I., as he would have been entitled to do had the validity of the Sardican canons been recognized; but, as he himself states when writing to Innocent, he only demanded to be tried by a fuller synod.[1] When, moreover, Innocent interfered, he claimed no special power; though, curiously enough, his action has been adduced by zealous Catholics as an evidence that the Sardican canons were then in force. So far was he from assuming this that he told the followers of Chrysostom that the canons of Nicæa were the only ones entitled to implicit obedience; and though he alluded to the council of Sardica, it was only to substantiate his condemnation of the council of Antioch, which had been quoted by the persecutors of Chrysostom. He based on it no claim to appellate jurisdiction, and could only advise that an œcumenic council be held, as the sole tribunal which could decide on the justice of the condemnation of Chrysostom.[2]

[1] S. Joann. Chrysost. ad Innocent. Epist. I. cap. 2.

[2] Innocent. PP. I. Epist. VII. cap. 2, 3, 4. The absence of legitimate and recognized authority on the part of the popes to interfere in such matters is confessed by the fabrication of an epistle in which Innocent is made to excommunicate Arcadius the emperor and Eudoxia his wife for the part they had taken in the persecution of the saint; and also of an humble appeal from them for restoration to communion. As late as the end of the seventeenth century these documents were still cited as genuine (Chr. Lupi Schol. in Canon. Sardicens. IV.—Opp. T. I. p. 294)—but they are now universally admitted to be spurious. Not content with this forgery, it was improved on by the mediæval popes into an assertion that Innocent actually deposed Arcadius; and this, with a similar fabrication of the deposition of the Emperor Anastasius by Pope Anastasius II., was the warrant for Innocent IV. in depriving Frederic II. of the imperial crown at the council of Lyons in 1247.—Nic. de Curbio Vit. Innoc. PP. IV. cap. 19 (Baluze et Mansi I. 199).

Yet the earliest claim of a general prerogative to revise the judgment of provincial synods appears to have been asserted by Innocent I. An epistle of his to Victricius of Rouen orders all important cases to be referred to Rome for revision, after decisions had been rendered on the spot, and he bases this demand on custom and the synodal decrees—probably alluding to those of Sardica.[1] That this, indeed, was becoming not uncommon is manifested by his correspondence in 414 with the bishops of Macedonia. Bubalius and Taurianus, after condemnation at home, had exhibited letters purporting to come from Innocent. The Macedonian prelates thereupon complained to him of this interference, to which he replied that the letters in question were forgeries[2]—an evidence that the evils of the new system were already beginning to make themselves felt, and that the church was not as yet prepared to submit.

These pretensions at length aroused resistance, and, as soon as their basis was investigated, Rome herself was obliged to confess that they could not be justified. A priest of Sicca, in Numidia, named Apiarius, was deprived of holy orders after due investigation and trial by the provincial bishops. He carried his case to Pope Zozimus, who restored him to communion, and sent him back to Africa with legates to sustain him. At the sixth council of Carthage the matter was solemnly taken up and debated. The epistle of Zozimus grounded his right of interference on the Sardican canons, to which he attributed the name of the venerable council of Nicæa.[3] The authority

[1] Innocent. PP. I. Epist. II. cap. 3.

[2] Ejusd. Epist. XVIII.

[3] The manner in which Zozimus insisted on the authority of these canons as emanating from the council of Nicæa, and the discussions concerning them in the council of Carthage, show that the importance of the substitution was keenly appreciated at the time, and that it scarcely could have been accidental. The labored arguments of Baronius (Ann. 419 No. 65–71) to prove that it was of little moment are their own best refutation. It was the fashion in Rome to confound the two councils together. Their canons were all included under the head of Nicæa in an

of the first œcumenic council was irrefragable, and the African fathers bowed submissively to it: but as the principles advanced were in such total conflict with the decrees usually attributed to that august body, they only yielded provisionally, and demanded a fuller investigation. Professing implicit obedience to the Nicene code of discipline, they forthwith dispatched messengers to Alexandria and Constantinople for authentic copies, thinking that their own might possibly be imperfect. Great was their joy on being able to prove that the obnoxious claim was an unauthorized interpolation, and greater still when Apiarius confessed the irregularities for which he had been condemned. During these lengthened proceedings, Zosimus had died, and his successor, Boniface, had likewise passed away, after a pontificate of nearly four years. To Celestin I., therefore, did the African church communicate the result, in an epistle remarkable for its spirit of independence. The pope was requested, with slender show of respect, no more to entertain appeals from those who had been condemned at home, for no authority could be alleged in support of such pretensions. Ample provisions, moreover, existed to secure impartial justice on the spot where offences were committed, and no principle could justify conclusions formed from *ex parte* statements in distant regions, inaccessible to witnesses and testimony.[1] Not content with this, to secure their church from further aggression, the council revived a canon which threatened excommunication against all who should appeal to Rome after undergoing due trial at home, in terms which show that this was by no means the first struggle which had taken place on this question.[2] To appreciate this transaction in its full sig-

ancient collection (Migne's Patrolog. T. 56, p. 412) which Quesnel thinks was authoritatively used in Rome during this period, but which the Ballerini attribute to Gaul. The fact is that, in 525, Dionysius Exiguus, in his preface, explains that he himself had added them, with the African canons, to the authoritative Greek code, in the collection made by him for the Roman court.

[1] Cod. Eccles. African. can. 137 (Concil. Carthag. VI. can. 14).

[2] Non provocent ad transmarina judicia, sed ad primates suarum provinciarum, *sicut et de episcopis sæpe constitutum est*. Ad transmarina

nificance, we must remember that at this period the church of Africa was the stronghold of orthodoxy, under the leadership of the brilliant St. Augustine, who took part in all these proceedings—and further, that when the Sardican canons were traced to their true source, they were treated by unanimous consent as void of all authority.

Even while the African church was thus sturdily and successfully vindicating its independence, Rome was managing to extend over Gaul the jurisdiction which St. Augustine denied it to possess. In 419 the clergy of Valence appealed to Boniface I., complaining of their bishop, Maximus, whom they accused of Manicheism and other crimes, and who had refused submission to the synods assembled for his trial. Boniface had no scruple in seizing the opportunity thus offered. He ordered another synod to be convened, in which sentence should be pronounced, whether Maximus appeared to defend himself or not; but the result was to be transmitted to Rome for papal approval.[1] So in 428 Celestin I. consoled himself for his vanishing sway over Africa by writing to the bishops of Vienne and Narbonne, blaming them for the consecration as a bishop of a certain Daniel, whose misdeeds in the East were at that time undergoing investigation in Rome, and whom he had been vainly summoning and searching for. He also inveighed against the conduct of a priest of Marseilles, implicated in the murder of a brother, whom he ordered to be tried by the ecclesiastical authorities.[2]

The gradual advances thus made culminated under the energetic management of Leo I. The Barbarian invasions were daily rendering the transalpine churches more in need of aid and sympathy, and as the temporal sway of Rome declined, her spiritual authority grew stronger. The splendid talents of

autem qui putaverit appellandum a nullo inter Africam ad communionem suscipiatur.—Cod. Eccles. African. can. 28 (Concil. Milevit. ann. 402 can. 22).

[1] Bonifac. PP. I. Epist. 2.

[2] Cœlest. PP. I. Epist. ad Episc. Gall. cap. 3, 6.

Leo, his unimpeachable character and vigorous temper, fitted him to take full advantage of this conjuncture, and to him the Holy See owes the establishment of its prerogative. The quarrel of St. Hilary, Metropolitan of Arles, with the Archbishop of Vienne, afforded a fair opportunity, which was improved to the utmost. Hilary, confident in his own integrity of purpose, the justice of his cause, and his blameless life, was not disposed to submit himself to a domination which he did not recognize. He was broken in the struggle, and though the Gallican church did not pay heed to the deprivation of communion pronounced against him, no resistance was made to his degradation from the primatial see of Gaul. The triumph of the apostolic see was completed, and its supremacy was established, not only by this example of its power, but by an imperial edict which, in 445, during the progress of the affair, Leo procured from the feeble Valentinian III. In this extraordinary document the most extravagant pretensions of the Roman church receive the full sanction of law; its authority is declared competent to any stretch of power; any attempt at resistance is made a violation of the obedience due to the emperor himself; the secular magistrates are directed to compel the presence at Rome of any prelate whose case may be evoked there for judgment by the pope; and Aëtius, the military governor of Gaul, is directed to levy a fine of ten pounds of gold on any judge who may infringe the privileges thus bestowed.[1] These enormous prerogatives are declared to be in pursuance of the decrees of a synod; but as no special council is mentioned, we may presume that the Sardican canons were those used to give color to the usurpation, Valentinian being more easily imposed upon than St. Augustine.

Armed with such a weapon, it is no wonder that Leo could declare to the prelates of Gaul that his church was competent to entertain appeals from any source, that Hilary was guilty in denying the obedience which he owed to St. Peter, and

[1] Novell. Valentin. III. Tit. XVII. §§ 2, 3.

that whoever refused to admit the authority of the see of Rome condemned himself to hell.[1] Encourged by success, he carried his prerogative still further, and assumed that no sentence could be rendered until the case should be submitted to him and his pleasure be expressed, thus erecting the Roman church into a court of first and last resort.[2] The papal decretals, moreover, he declared to be binding on the whole church, any infringement or neglect of their commands being an offence for which there was no pardon.[3]

How entirely this supreme jurisdiction was the creation of imperial power was seen when the final death-struggle between Alexandria and Constantinople seemed to give Leo the opportunity of coercing both antagonists into submission, and the East, notwithstanding its distracted condition, utterly repudiated the pretensions of the West. When Eutyches was first condemned in the synod of Constantinople in 448, Leo assumed that he appealed to Rome; but when the matter was investigated in the synod of the succeeding year, it was proved that, after sentence had been passed upon him, he had said to the imperial commissioner that he appealed to a council embracing Rome, Alexandria, Jerusalem, and Thessalonica—that is to say, to an œcumenic council, which was strictly in accordance with established precedent.[4] It is true that when Eutyches had his revenge in the Robber Synod of Ephesus in 449, where the deposition of one of his opponents, Theodoret of Cyrus, was confirmed, the latter sought refuge in Rome, and appealed to Leo in terms of fulsome supplication.[5] but this is not to be admitted as a precedent of any authority. Supported by the imperial court, Eutychianism for the moment controlled the East. Leo's legates at Ephesus had been

[1] Leon. PP. I. Epist. x. cap. 2.

[2] Ejusd. Epist. xiv. cap. 1. [3] Ejusd. Epist. iv. cap. 5.

[4] Concil. Chalced. Act. i. (Harduin. II. 198, 207.) Eutyches omitted Antioch purposely, because he considered Domnus, its metropolitan, to be tainted with Nestorianism.

[5] Leon. PP. I. Epist. 52.

treated with the scantiest respect, and one of them, Hilary the Deacon, had been forced to fly for his life. Rome, of course, became the haven of refuge for the orthodox Greeks, who were ready to say or do anything to insure protection for themselves. Leo himself was utterly without jurisdiction in the premises, and all that he could do was to join in the council of Chalcedon, when the death of the Emperor Theodosius rendered it possible to cancel the proceedings at Ephesus by another synod. Meanwhile, as Dioscorus of Alexandria, the Eutychian leader, and Leo had mutually excommunicated each other, the latter had no hesitation in admitting Theodoret to episcopal communion; and, on the strength of this, and the special command of the Emperor Marcian, Theodoret, after a sharp struggle, was admitted to a seat in the council of Chalcedon.[1] When, however, his case came up in the council, the action of Leo was treated as null and void. He was ordered to prove his orthodoxy by anathematizing Nestorius, and on his tergiversating, the holy fathers shouted "He is a heretic! He is a Nestorian! Turn out the heretic!" It was not until he had thus been forced formally to curse Nestorius and Eutyches that the council acknowledged him to be orthodox, and then proceeded to decree his restoration to his see.[2] The previous action of Leo on his appeal went for nothing, and the council, as we have seen, took care to rebuke the papal aspirations by asserting the equality of Constantinople with Rome. The failure was the more disgraceful, as Leo had imitated Zozimus in twice attempting during the course of the quarrel to foist upon the Emperor Theodosius the Sardican canons as those of Nicæa.[3] It was probably to prevent a repetition of such attempts that the council formally adopted a canon, against which the legates of Leo registered no protest, providing that any one wronged by his metropolitan should appeal to the primate of the diocese or to Constanti-

[1] Concil. Chalced. Act. I. (Harduin. II. 71–4.)
[2] Ejusd. Act. VIII. (Ibid. pp. 498–9.)
[3] Leon. PP. I. Epist. 43, 56.

nople.[1] The Roman bishop thus was treated as simply the primate of his own province, and if any general superior jurisdiction was erected it was reserved to the New Rome.

While the East thus vindicated its independence, the pretensions of Rome were submitted to in the West for some time with more or less regularity. The epistles of Leo, and of his successor Hilary, bear ample testimony to their activity, and to the numerous cases in which the authority of the Holy See was invoked by the ecclesiastics of distant provinces. The appeal of the Tarragonensian bishops, at the synod of Rome, in 465, is couched in terms which abundantly testify to the submission of the Spanish church to the most imperious assumptions of St. Peter's superiority.[2] When in 495 the struggle over the excommunication of Acacius had given a fresh impetus to the pretensions of Rome over her hated rival of Constantinople, Gelasius I. felt himself warranted in declaring that the Apostolic see had the power of judging the whole church, and was to be judged of none; that it would receive appeals from the whole Christian world, and that from its decisions there was no appeal;[3] and when Euphemius, the successor of Acacius, urged that the excommunication of the latter by Felix III. was irregular, as the act of a single bishop, without a formal trial, Gelasius indignantly retorted that such an assertion proved his contempt for the canons which constituted the see of Peter as the universal judge of the Christian church.[4]

Yet this supremacy, so confidently proclaimed, rested on the most unstable foundation, and was crumbling even while Gelasius sent his swelling words over Christendom. The gift

[1] Concil. Chalced. can. 9, 17.

[2] Concil. Roman. ann. 465.—Hilar. PP. Epist. ad Ascanium.

[3] Gelasii PP. I. Epist. ad Episc. Dardan. (Harduin. II. 909.)

[4] Ejusd. Commonit. ad Faust. Magist. (Ibid. 885.) The groundlessness of these claims was confessed not long afterwards by introducing an assertion of them in the fabricated council said to have been held by Silvester I.—Concil. Roman. sub. Silvest. can. xx. (Migne's Patrol. VIII. 840.)

of the imperial power, it vanished with that power, and when the Christianized Franks and Goths erected new kingdoms in France and Spain, independence of the temporal authority of Rome brought with it independence likewise of its spiritual domination. The Merovingian and Gothic princes were well nigh absolute rulers over church as well as state, and felt little reverence for the antagonistic claims of St. Peter.

It is true that when in 534 Contumeliosus, Bishop of Riez, was tried for incontinence, the bishops, to relieve some doubts, applied to John II. for advice, and punished the criminal in accordance with the papal recommendation, and that Contumeliosus appealed to the next pope, Agapet I., who ordered a new trial. The whole case, however, affords a striking contrast to the condition of affairs under Leo and Hilary. John merely transmits canons and points out what ought to be done in the premises, and Agapet's epistle is absolutely apologetic in its tone, as though he felt that he was assuming a novel power which might be disputed, and which required to be explained.[1]

Even more significant is the history of the bishops Salonius of Embrun, and Sagittarius of Gap. Their dissolute and riotous conduct becoming unbearable, they were deposed by the synod of Lyons in 567, and made no pretension to any direct right of appeal. Knowing, however, that they were in favor with King Gontran, they invoked the royal power for permission to carry the matter to Rome. This was granted, and Gontran moreover furnished them with special letters to the pope. John III. heard their story, and sent to the king —not to the bishops—an order for their restoration, which was duly accomplished. As they became more reckless than ever, Gontran sent for them, when, irritated by an audacious speech, he stripped them of all their possessions, and threw them into a monastery. This was arbitrary and illegal, but they dared to take no appeal to Rome, and at length Gontran relented

[1] Joann. PP. II. Epist. 5, 6. Agapeti PP. I. Epist. 7.

and restored them. Then, in 579, the synod of Chalons took up the case. The accusations of homicide and adultery brought against them were thought sufficient to justify penance only, so a charge of treason was framed, upon which they were condemned and imprisoned in the church of St. Marcel; and although they succeeded in escaping, other bishops were installed in their sees, and they never ventured to appeal to Rome.[1] This whole story shows how completely the papal authority had been superseded by the royal prerogative, and the same is evident in the cases of Pretextatus of Rouen,[2] and Giles of Rheims,[3] neither of whom would have failed to appeal to Rome had he imagined that he had any chance of being saved by papal intervention.

In the numerous councils, moreover, held in France and Spain during the sixth and seventh centuries, there are constant enactments of provisions for the settlement of ecclesiastical difficulties, while no allusion occurs to any customary reference to Rome. Thus, in the second council of Lyons, held in 567, all questions between bishops are directed to be finally settled by their provincial brethren, and any one endeavoring to elude this judgment is threatened with three months' withdrawal of friendly intercourse.[4] It is true that it was from the decision of this very council that Contumeliosus appealed to Rome, but for this action he found it necessary to invoke the royal power, and the undeviating action of the frequent synods shows that the Gallican and Spanish churches were successfully vindicating their independence of papal jurisdiction as far as concerned their internal affairs.[5] This severance from Rome grew wider and wider, in the wild disorders of the later Merovingians,

[1] Greg. Turon. Hist. Franc. Lib. v. cap. 21, 28.

[2] Ibid. Lib. v. cap. 19; Lib. VII. cap. 16.

[3] Flodoard. Hist. Remens. Lib. II. cap. 2.

[4] Concil. Lugdun. II. can. 1.

[5] Concil. Aurelianens. III. can. 4.—Concil. Aurelianens. V. can. 3.—Concil. Turon. II. can. 2.—Concil. Matiscon. II. can. 19.—Concil. Parisiens. V. can. 11.—Martin. Bracarens. can. 13, etc.

until, as France passed into the hands of the Mayors of the Palace, it was separated from Rome almost as effectually as was Spain by the Saracen conquest.

It is by no means improbable that the custom of bestowing the *pallium* was introduced by the popes in the hope of arresting this movement of disintegration. As early as the fourth century, the Eastern emperors were in the habit of giving a cope to their prelates as a mark of dignity. The popes at length adopted the plan of granting its use to primates and apostolic vicars, as a token of their possessing certain privileges, in return for which they were expected to render peculiar obedience to the Holy See. This was in some sort a delegation of imperial power, for in one of the earliest recorded instances of its use, when Auxanius of Arles applied, in 543, to Vigilius for the pallium, which had been conceded to his predecessor by Pope Symmachus, Vigilius replies that he cannot give it without the permission of the emperor. Nearly two years passed away in obtaining Justinian's consent, and in 545 Vigilius formally authorized Auxanius to wear it, and at the same time constituted him papal vicar throughout Gaul, with full exercise of papal prerogatives over the Gallic hierarchy, excepting that cases of peculiar magnitude and intricacy were to be referred to Rome for consultation.[1] It was evidently an attempt to retain through a deputy the nominal possession at least of authority over a region which was rapidly becoming virtually independent. So in 595, when Gregory the Great transmitted the pallium with the same dignity to Virgil of Arles, he instructed the latter that all important cases were to be reserved for settlement by the Holy See.[2] It is instructive to observe that these special efforts were necessary to secure attention for claims so exceedingly moderate in comparison with the prerogatives exercised in the preceding century by Leo and Hilary.

France in the eighth century had become almost a heathen

[1] Vigilii PP. Epist. 6, 7, 8, 9.

[2] Gregor. PP. I. Regest. Lib. v. Epist. 53, 54, 55.

country, and when, about the year 700, Willibrod was deputed as missionary to the Frisians by Pope Sergius, and in 719, Gregory II. encouraged St. Boniface who was bound to northern Germany on the same pious errand, a new opportunity was offered to the papacy to regain its lost ground. The churches founded by these missions were more dependent than their elder sisters upon the Holy See, and the missionaries themselves more full of zeal for the prerogatives of St. Peter, from whom they derived alike their inspiration and their authority. The golden opportunity was skilfully improved. When Boniface was recalled to Rome in 723 to receive the reward of his holy labors in Thuringia and Saxony, Gregory consecrated him as bishop, and administered to him an oath till then unknown in the observances of the transalpine churches.[1] On the blessed relics of the apostle, and under terrible imprecations, Boniface swore fealty and obedience to St. Peter and to the pope as his vicar; and he specially promised that whenever he was cognizant of irregularities among prelates he would correct them if possible, and if he were powerless to effect this, that he would report them to Rome.[2] Thus bound by every tie of fealty, he was the missionary equally of St. Peter and of Christ.

When Carloman and Pepin undertook to rechristianize France, Boniface was the instrument providentially at hand, and he labored not only to restore religion but to revive the almost forgotten reverence for Rome.[3] In a letter to his friend Cuthbert of Canterbury, he dwells at much length on the proceedings of a synod in which he made the assembled prelates subscribe a promise of obedience to St. Peter and to his vicar,

[1] Compare the oath of Boniface with that previously taken by the suburbicarian bishops, as given in the Lib. Diurn. Roman. Pontif. cap. III. Tit. 8. A clause in the latter swearing fidelity to the temporal sovereign is replaced in the former by the pledge to report to Rome all recalcitrant prelates.

[2] Bonifacii Epist. inter 117 et 118.

[3] Ejusd. Epist. 132. Et quantoscunque audientes vel discipulos in ista legatione mihi Deus donaverit, ad obedientiam apostolicæ sedis invitare et inclinare non cesso.

and that all metropolitans should seek the pallium from the pope—and when this obligation was received at Rome it caused much rejoicing. He further procured the adoption of a canon by which all irrepressible disorders were to be reported by the bishops to their metropolitans and by them to the pope—a regulation which Boniface evidently felt to be novel, and which he endeavored to justify by the example of his own oath.[1]

It might well seem to Boniface that the fearful laxity of discipline in the Gallican church could be cured only by the intervention of a power higher than that of the local authorities of the kingdom, whether spiritual or temporal, and he inculcated the invocation of that power with a directness of appeal unknown in earlier times. Thus we see him calling in the interference of Stephen II., in his quarrel with the Archbishop of Cologne, respecting the ruined see of Maestricht, and his successor St. Lull appealing at once to Rome to repress the insubordination of a troublesome priest.[2] His see of Mainz thus became peculiarly connected with the papacy, and we can readily understand that it was but faithful to its traditions when it produced the forgeries of Riculfus and Benedict the Levite.

In the effort to resuscitate the influence of the papacy over western and northern Europe the pallium again makes its appearance as a potent instrument. In the synod above alluded to, the reference to it is significant, showing how Boniface urged upon his metropolitans the duty of seeking it at the hands of the supreme pontiff. They showed themselves, however, fearful of the honor and chary of the dignity, evidently dreading to incur the obligations connected with it more than they coveted its attendant advantages. In 743 or 744, Boniface writes to Pope Zachary that the Frankish prelates objected to sending for it on account of the expenses assessed upon the applicant by the papal court—an abuse which they did not hesitate to stigmatize as simony. Zachary denied this emphatically, and to remove all difficulty promised to abolish

[1] Bonifacii Epist. 32.

[2] Ejusd. Epist. 97, 100.

the fees exacted by his officials.[1] This concession to the complaints put forward did not seem to remove the deep-seated mistrust entertained of the dangerous gift, for in 749 we find Boniface again declaring to the pope that he had made every effort in his power and that he had not yet been able to induce the archbishops to apply for it.[2] How difficult it was to overcome the repugnance of the Teutonic prelates is manifest in the fact that St. Lull, the especial disciple of Boniface, in whose favor the latter exercised the exceptional privilege accorded him of nominating a successor to his primatial see of Mainz, though appointed in 751 had not yet sought the pallium in 772, when Adrian I. wrote to Tilpin of Rheims (the Archbishop Turpin of the *chansons de geste*), ordering him to investigate the doctrine and virtues of Lull, and, if the result was satisfactory, to give him a certificate, on the strength of which the pallium would be sent to him.[3] It was evident that some additional inducements were necessary to overcome this aversion and to bind the hierarchy to the throne of St. Peter.

[1] Bonifacii Epist. 143. The complaints of exaction were probably not unfounded. In 808 we find the bishops of England remonstrating against a demand that their archbishops should go to Rome for the pallium, in place of its being sent to them as formerly, concluding with a sharp intimation that the object of the innovation was to exact a simoniacal payment. (Haddan and Stubbs, Councils, III. 559–61.) Some two centuries later, Cnut the Great, of England, in writing from Rome and detailing his efforts to obtain privileges for his people, states—"Conquestus sum iterum coram domino papa, et mihi valde displicere dixi, quod mei archiepiscopi in tantum angaricbantur immensitate pecuniarum quæ ab eis expetebantur dum pro pallio accipiendo secundum morem apostolicam sedem expeterent; decretumque est ne id deinceps fiat"—(Florent. Wigorn. ann. 1031). When, in 1243, two rivals were contesting the archiepiscopal see of Trèves, and Innocent IV. sent the pallium to one of them, the fact that it was granted gratuitously was carefully noted by the chronicles as a rare and exceptional favor. (Gesta. Trevir. Archiep. cap. clxxxii.) How great a source of revenue it finally became may be judged from the *Gravamina Germanicæ Nationis* in 1510 (Freher. et Struv. II. 702), and the complaints of the German archbishops at the Congress of Ems in 1786 (Dalham Concil. Salisburg. p. 664).

[2] Bonifacii Epist. 141.

[3] Flodoard. Hist. Remens. Lib. II. cap. 17.

Charlemagne, in reconstructing the civil and ecclesiastical institutions of the empire, was careful not to allow encroachments on any portion of his prerogative, and we have seen above how absolutely he retained in his hands the jurisdiction over the church as well as over the state. The appellate power, and the right to interfere in the internal concerns of the western church, once arrogated by the popes, slumbered during his reign and that of his son as completely as they had during the anarchic period of Pépin d'Herestal and Charles Martel. Whatever hopes had been excited by the zealous labors of Boniface had proved vain, and further efforts were necessary. The first endeavor seems to have been made through the instrumentality of the pallium.

It is a noteworthy evidence of the desuetude into which the appellate jurisdiction of Rome had fallen that among the special privileges now conceded, to render the pallium attractive, was one which entitled its wearer to appeal to the pope from the judgment of a local synod. The earliest instance of this that I have noticed occurs in 772, when the pallium was conferred on Archbishop Tilpin of Rheims, and the terms of the grant show that this right of appeal was a novel privilege and a special indulgence.[1] Allusion has already been made to the case of Theodulf of Orleans, which shows not only the privileges claimed in virtue of the pallium, but also how little

[1] "Non solum vetera . . . sed et nova, tibi pro tuo bono studio concedimus . . . confirmamus atque solidamus . . . Et te aut futuris temporibus Remensem episcopum et primatum illius diœcesis non præsumat neque valeat unquam aliquis de episcopatu dejicere sine canonico judicio neque in ullo judicio sine consensu Romani pontificis, si ad hanc sanctam sedem Romanam . . . appellaverit de ipso judicio"—Flodoard. Hist. Remens. Lib. II. cap. 17.

The privilege thus connected with the pallium will explain some transactions of the ninth century, which have been quoted to prove the appellate jurisdiction of the papacy—see Thomassin, Discip. de l'Église, P. III. Liv. 1 chap. 1. Thus, Charles le Chauve, in 863, admitted the right of Adventius, Bishop of Metz, to appeal to Rome (Goldast. III. 284), for the bishops of Metz at that time enjoyed the pallium and were styled archbishops, though they were not metropolitans.

respect they received even from so religious a monarch as Louis le Débonnaire. Even after the principle of appellate jurisdiction in all cases had been established, as will presently be seen, by the vigorous efforts of Nicholas I., when, about 870, Adrian II. sent the pallium to Actardus, Bishop of Nantes, as a personal reward for his constancy under the Norman devastations, the gift was accompanied with the special privilege of appealing to the pope in last resort.[1] From the use made of the pallium in after ages, and the difficulty which was long experienced in forcing the gift upon an unwilling hierarchy, we may not unreasonably suppose that there was a double object aimed at in this policy—to extend the prerogative and influence of the Holy See, and to overcome the repugnance manifested by the prelates to seek the pallium.[2] Even this, how-

[1] Adriani PP. II. Epist. 9.

[2] The questions connected with the pallium are deserving of fuller treatment than space will here allow. Even before the quarrel over the investitures had definitely arisen between the empire and the papacy, the pallium gave to the latter control over the nominations to the loftier sees. This was accomplished by means of a forged decretal, attributed to Damasus, by which all metropolitans, under pain of degradation, were obliged to seek the pallium within three months after consecration. (Burchard. Decret. Lib. I. cap. 25.) Thus when in 1060 the Empress-Regent Agnes appointed Sigfrid to the see of Mainz and applied for his pallium, she was informed that he must go to Rome and be examined as to his fitness, so that, if approved, he should receive it (P. Damiani Lib. VII. Epist. 4). A more effective expedient could hardly be devised, especially when it came to be conceded that the possession of the pallium was a prerequisite to the enjoyment of the archiepiscopal functions. This appears from a petition of the Archbishop of Canterbury in 1293, "Postulat devota vestra filia ecclesia Christi Cantuarensis concedi pallium de corpore sancti Petri sumptum, electo suo consecrato, ut habeat plenitudinem officii, et pro hac instanter et fortiter supplicat sanctitati vestræ." (Wilkins Concil. II. 199.) As though this were not enough, the applicant was obliged to take a full and regular oath of fidelity to St. Peter, the Roman church, the pope and his successors, with only the exception "salvo ordine meo," no exception being made in favor of any allegiance due to the king or other temporal authority. (Wilkins ubi sup.) See also the oath exacted of Philip, Archbishop of Cologne, on granting him the pallium, at

ever, was not sufficient to bring its use into favor, and in 877 John VIII. endeavored at the synod of Ravenna to compel its

the third council of Lateran in 1170 (Hartzheim Concil. German. III. 470).

The progress to this point was gradual, and for a long time considerable opposition and hesitation were manifested with regard to it. Thus, in 1023, Fulbert of Chartres, one of the best canonists of his time, writes to Arnoul, Bishop of Tours, in a strain which manifests how little respect was paid to the fabricated decretal of Damasus at that period—"Si pallium requisistis a Romano pontifice et vobis illud sine causa legitima denegavit, propter hoc non est opus dimittere ministerium tuum ; et si vestra tarditate nondum est requisitum, cautela est expectare donec requiratur" (Fulbert. Carnot. Epist. 59). The aggressive energy of Gregory VII. vindicated this assumed prerogative of Rome with the same vigor that he showed in other cases. When Guillaume Bonne-Ame, the successor of Lanfranc in the abbacy of Caen, received the Archiepiscopate of Rouen in 1079, and neglected to apply for the pallium, Gregory, in 1081, addressed him with bitter reproaches for his tardiness, and forbade him to ordain priests or to consecrate bishops or churches until he should have obtained it. (Gregor. PP. VII. Regest. Lib. IX. Epist. 1.)

The nice questions which arose during the process of enforcing this unfamiliar custom are well illustrated by the case of Peter, Archbishop of Braga, who, in 1047, was deposed by the Archbishop of Toledo for receiving the pallium and its attendant privileges from Clement II., and Braga for fifty years remained without a bishop.—Bernald. Vit. B. Geraldi Archiep. Bracarens. cap. 6 (Baluz. et Mansi I. 132).

Among the complaints against the papacy by the French nation, in a protest registered at the council of Bâle in 1435, is a case in which an archbishop had for five years vainly sought to obtain his pallium, and was obliged at length to pay heavily for it, though his claims were earnestly supported by the council itself. (Martene Ampl. Coll. VIII. 921.)

In 1516, Jacob Wimpfeling, in a treatise on the oppressions of Germany by Rome, complains especially of the enormous sums exacted for the pallium, which were collected from miserable peasants and clerks, depriving the former of the means of educating their children, and the latter of the necessaries of life. (Von der Hardt Concil. Constant. T. I. P. v. p. 234.) Even as late as 1786 the Archbishops of Germany assembled in Congress at Ems, complained bitterly of the changes in the discipline of the church introduced on the strength of the False Decretals, and instanced particularly the immense sums exacted by the Roman curia for annates and the pallium, the payment of which frequently reduced the prelates to insolvency ; and they threatened, if the pallium could not be given to them gratis, that they would execute their functions without it. (Dalham Concil. Salisburg. pp. 659, 664.)

adoption by ordering that all metropolitans should be ejected who did not apply for the pallium within three months after consecration[1]—a regulation which met with little more respect than previous attempts in the same direction. Perhaps it was to break the power of this stubborn class by bringing their suffragans into direct relations with the Holy See that in 873 the same pope had sent to Walo, Bishop of Metz, the pallium, with special instructions as to its use. The first time he wore it, however, his metropolitan Bertolf of Trèves called him to account for the innovation, and would not give heed to the papal letter alleged in its defence. The quarrel waxed warm until Hincmar of Rheims interposed and brought about peace by inducing Walo to abandon his pretensions, the pope apparently being powerless to enforce the precedent which he had sought to establish.[2]

The power to be obtained by the Papacy through this dangerous gift was however only indirect, and the prerogative of universal appellate jurisdiction, so long and so unavailingly sought, was finally obtained through the instrumentality of the False Decretals. The clear perceptions which planned and executed the forgeries laid especial stress upon the appellate power, and lost no opportunity to inculcate its necessity and to remove all obstacles to its exercise in the widest sense. The authority of the primitive church was invoked for new rules by which bishops under accusation could elect to appear at once before the papal tribunal, and indeed were directed to do so if they thought their fellow prelates prejudiced against them—the warmth of the invitation justifying them in the assumption that such a manifestation of filial confidence in the Holy See might cover a multitude of sins.[3] Other canons

[1] Synod. Ravenn. ann. 877 can. 1, 2. These canons are given in Gratian (P. I. Dist. C. can. 1), where they are attributed to Pelagius I.

[2] Histor. Trevirens. (D'Achery Spicileg. II. 213).

[3] Libere apostolicam appellent sedem, atque ad eam quasi ad matrem confugiant, ut ab ea (sicut semper fuit) pie fulciantur, defendantur et

were promulgated by which the trial of a bishop could be undertaken only by a synod called for that special purpose by command of the pope himself;[1] and a still further extension of power was assumed by the production of a regulation under which no verdict could be rendered until it had been submitted to the papal court and there approved.[2] Indeed a decretal was fabricated under the name of Eleutherius, a pope of the second century, by which the most exaggerated pretensions of Leo and Hilary were attributed to the primitive church and were extended to the whole body of ecclesiastics. Bishops were, it is true, to be allowed to take testimony and pronounce judgment in accusations of their subordinate clergy, because it was physically impossible that all such cases should be attended to in Rome in the first instance, but no judgment was final until it should be submitted to the pope for approval or reversal, and if a sentence of deposition had been rendered no appointment to the vacant church could be made until the final decree of the Holy Father was received.[3] The pope was thus pronounced to be the sole judge, in first and last resort, for every member of the clergy; and as the one source of justice he simply delegated, for the sake of convenience, to the local prelates, such portion of his power as would enable them to take testimony and forward it to him, with their opinion expressed in the form of a verdict.[4] In fact, the constant iteration of these principles throughout the False

liberentur (Pseudo-Julii Epist. 3.—Ivon. Decret. P. IV. can. 257). Cf. Ingilram. c. 23 (Capitul. Lib. VII. cap. 315).—Ingilram. cap. 20 (Capitul. Lib. VII. cap. 314).

[1] Ingilram. c. 3—Pseudo-Julii Epist. 2; Pseudo-Marcelli Epist. 1—Capitul. Add. IV. cap. 24.

[2] Pseudo-Victor. Epist. 1 (Remig. Curiens. Episc. can. 39)—Pseudo-Zephyrini Epist. 1—Pseudo-Fabiani Epist. 3 cap. 5—Pseudo-Sixti Epist. 1, etc.

[3] Pseudo-Eleuther. Epist. cap. 2—Cf. Pseudo-Fabian. Epist. 3 cap. 3.

[4] In the final triumph of the Isidorian principles this came to be the recognized doctrine of the church—that the episcopal power was simply enjoyed as a delegation from the papacy. It is fully enunciated by Innocent III.—Regest. Lib. I. Epist. 350.

Decretals, in every possible variation of language, shows the importance attached to them and the magnitude of the change in existing customs which they involved. When innovations so bold could be confidently asserted and arrogantly enforced, it is easy to account for the immense increase of papal prerogative, which brought under its influence every portion of the ecclesiastical body, even to its ultimate fibres.

The first attempt to give them practical effect is found in the epistle attributed to Gregory IV. in 833, evoking to Rome the case of Aldric, Bishop of Le Mans. Jaffé[1] expresses himself unable to decide as to its authenticity, but it is so thoroughly in the style of the forgeries that whether genuine or not it evidently proceeded from the men who were concerned in them. It purports to be written when Gregory was returning from the Field of Falsehood, while he was in the hands of Wala and the ambitious churchmen who had shortly before nerved him to the performance of their will by proving to him the illimitable prerogatives attributed to the successor of St. Peter in the False Decretals. Its bold assertions of the authority of Rome, its lengthened arguments to vindicate that authority, and its threats against the disobedience which was evidently anticipated, all show that it was written to obtain power, and not merely to exercise it.[2]

Another attempt was made to assert the appellate jurisdiction of Rome by Sergius II., when, in 844, he conferred the vicariate on Drogo, Archbishop of Metz, and directed all bishops conceiving themselves unjustly condemned by local synods to appeal to Drogo, and through him to Rome.[3] Though Drogo was the son of Charlemagne, this attempt would appear to have been treated with silent contempt, and no effort seems to have been made to enforce it. A glance at

[1] Regest. p. 227.

[2] Gregor. PP. IV. Epist. 1. A second epistle attributed to Gregory, ordering the restitution of Ebbo of Rheims, is, I believe, admitted on all hands to be an undoubted forgery.

[3] Sergii PP. II. Epist. ap. Hartzheim Concil. German. II. 145.

two or three transactions of the period, moreover, will show how little respect was paid to these pretensions until after the middle of the century, and how they were finally realized through the vigorous action of Nicholas I. Thus, in the reaction of 835, Ebbo, Archbishop of Rheims, was condemned and deposed by a synod for his active complicity with Gregory IV. in the rebellion against Louis le Débonnaire. The insulted majesty of Rome did not interfere, but five years later, when his patron, the Emperor Lothair, regained power, Ebbo was forcibly reinstated, and on the defeat of Lothair he was obliged to fly, after enjoying his recovered dignity for about a year. After some time he went to Rome and appealed to Sergius II., who only restored him to communion. Hincmar, who was installed in the see of Rheims in 845, made application for the pallium, and this gave Lothair, then supreme in Italy, the opportunity of forcing Sergius to inquire into the previous proceedings. The investigation, however, was a mere farce. Sergius did not venture to evoke the case before himself, and did not even attempt to send a legate to France, nor did Ebbo dare to appear before the synod which assembled for the purpose of verifying Hincmar's position. The bishops, when convoked, contented themselves with forbidding Ebbo to assume the rank from which he had been degraded, and Sergius withdrew from the affair by sending the pallium to Hincmar.[1] Twenty years later Nicholas I. heard that Hincmar had degraded certain priests who owed their ordination to Ebbo—probably during his term of forcible reinstatement. This pontiff's vigorous action contrasts strangely with his predecessor's hesitation, for he wrote at once to Hincmar, asking him to restore them. If he could not conscientiously do so, he was commanded to summon a council on the subject, of which the decision, with the testimony on which it was based, was to be submitted to Nicholas for his final action—

[1] Flodoard. Hist. Remens. Lib. II. cap. 20.

and all this under threats of instant penalties for disobedience.[1] In 858, Wenilo, Archbishop of Sens, was desirous of deposing Herman of Nevers on the ground of insanity. The favor of Charles le Chauve supported the threatened prelate, and the suffragan bishops hesitated to assist their metropolitan. To accomplish his purpose, Wenilo therefore, on the authority of the False Decretals, referred the matter directly to Nicholas, without risking a preliminary trial; and the answer of the pontiff, complimenting him on his reverence for St. Peter, and contrasting it with the insubordinate independence of those who were not ready to perform such acts of obedience, betrays in every line the joy of one who hopes to gain an unlooked-for victory, and who is receiving aid as welcome as it was unexpected.[2]

The battle between centralization and independence, however, was fought in the case of Rothadus, Bishop of Soissons. A regularly organized synod under Hincmar condemned and deposed Rothadus, without seeking from Rome a confirmation of the sentence, or heeding the appeal of the convicted bishop from the decision, which was put into execution after he had vainly demanded a reference to the pope.[3] This was too flagrant a denial of the new doctrines, and too favorable an opportunity for their vindication to be overlooked by the vigilant Nicholas. Branding the verdict with nullity, he evoked the case to Rome, but he met a stubborn resistance. Rothadus was not permitted to cross the mountains until after the most vigorous threats and appeals to the bishops of France, to the king, and even to the queen. Nicholas triumphed. Rothadus at last appeared in Rome, where for nine months he awaited his accusers. In sullen dignity they held themselves aloof, and the sentence was reversed. Another struggle ensued to procure his reinstatement; but in this, also, by liberal threats of excommunication, Nicholas was successful, and the supreme

[1] Nicolai PP. I. Epist. 89.

[2] Lupi Ferrar. Epist. 130.—Nicolai PP. I. Epist. 1.

[3] Annal. Bertin. ann. 862.

jurisdiction of the Head of the Church was decisively vindicated.[1] The Gallican bishops had maintained that when, in the trial of a bishop, questions arose not provided for in the canons, then, and then only, the authority of the Holy See was to be invoked—a reasonable concession which greatly moved the indignation of Nicholas—and to the last Hincmar asserted that the pope had usurped a power to which he was not rightfully entitled,[2] stigmatizing the universal right of appeal as a new law in conflict with all received custom.[3] One argument advanced by Nicholas is fairly illustrative of the kind of logic which Rome so successfully employed. The council of Chalcedon (can. 9, 17), to limit the jurisdiction claimed by Rome, directed that where an ecclesiastic had a complaint against his metropolitan, he should bring it before the primate of the province or the Patriarch of Constantinople. Nicholas absolutely quotes this canon, and reverses its purport by asserting that the "primate" can only mean the pope.[4] Incidental to the discussion was a dispute by which the authority of the False Decretals was finally affirmed and enforced. The Gallican bishops had ventured to cast some doubt, if not upon their authenticity, at least upon their validity, to which Nicholas angrily replied that they might as well call in question the authority of the Old and New Testaments, because they were

[1] Nicolai PP. I. Epist. 33–38, 47–49, 71–77.—Anastas. sub Nicol. PP. I.

[2] Hincmari Epist. 2.—Annal. Bertin. ann. 865. His expression is "Rothadum a Nicolao Papa non regulariter sed potentialiter restitutum." The doctrine that appeal to Rome lay only in doubtful cases he adhered to, notwithstanding the indignation of Nicholas, and he again enunciated it in an epistle to Adrian II., in 872, concerning Hincmar of Laon. Yet the confusion of the period is well illustrated by the fact that Hincmar, when it suited the purpose of the moment, had no hesitation in arguing that the pope was empowered to revise the proceedings of local and provincial synods, and to confirm or annul them as might seem proper to him.—De Divort. Lothar. et Tetbergæ Quæst. II.

[3] Goldast. Const. Imp. I 206.

[4] Nicolai PP. I. Epist. 73. He developed the argument more fully and more ludicrously in a letter to the Emperor Michael, during his quarrel with Photius (Epist. 86).

not to be found in the ancient collections of canons.[1] In this double victory, therefore, we learn both what the internal regulation of the church had been, and what it was rapidly becoming under the influences which were subjecting it to the control of a single mind for good or for evil.

The evil connected with the new system, indeed, was not long in making itself felt, and its more superficial effects became soon the subject of complaint, as interfering with the local administration of justice, destroying all certainty of punishment, and affording illimitable opportunities for deception as regards documents emanating from distant Rome. Even as early as 742, Boniface found that the papal jurisdiction which he labored so earnestly to establish proved a serious impediment to the reformation which was his other great object. Prelates whose lives were passed in open adultery and shameless licentiousness went to Rome, and, on their return, defied him by exhibiting papal letters restoring them to the exercise of their functions; and, on his complaining to Zachary, his only comfort was the reply that the thing was impossible.[2] The vigorous government of Charlemagne put a stop to all such abuses, but with the abasement of the civil power, and the recrudescence of papal pretensions, they again flourished to an alarming extent. The conviction soon became universal that, no matter for what crimes an ecclesiastic might be condemned at home, a valid reversal of sentence was readily procurable at Rome, which invited so pressingly such applications, and doubtless appreciated fully their pecuniary fruitfulness. The transalpine church grew restless under the insubordination and vice naturally resulting from this state of things, and in 878, Charles le Chauve addressed to John VIII. a long and earnest remonstrance, in which he described the subversion of discipline which it entailed. He speaks of the bishops who, appealing from the just sentences of their metropolitans, felt secure that the distance and dangers of the journey would protect

[1] Nicol. PP. I. Epist. 75.

[2] Bonifacii Epist. 132, 138.

them against the production in Rome of the testimony which proved their guilt; of the priests who, after episcopal condemnation, disappeared, no one knew whither, until their return with a papal letter of acquittal—the genuineness of which, however doubtful, no one dared to dispute—showed that their absence had not been fruitless; and he dwells especially on the protection which this system gave to concubinage, which for a thousand years has remained a corroding ulcer of the church.[1] We see by this that the appellate jurisdiction of Rome already extended over all classes of the clergy, and, comparing it with the legislation of Charlemagne designating the royal court as the ultimate tribunal in such cases,[2] we learn the rapid growth of the power and influence of the Holy See. Charles might remonstrate, but the power of the sovereign was subdued by this time, and he did not venture to put an end to the evils which he so correctly appreciated. Indeed, the confused and shifting policy of those tumultuous times occasionally induced both king and bishops to recognize the pretensions of Rome, for the purpose of gaining some temporary advantage.[3]

Yet the church did not submit without occasional remonstrance to these pretensions, which clearly threatened to subdue the hierarchy to vassalage, and to surround the enforcement of discipline with unaccustomed difficulties. In 895, for instance, the council of Tribur speaks of the papal right of appellate jurisdiction as a grievous and almost insupportable burden, to be borne with such patience as the churches might command; but at the same time it endeavored to counteract in some degree the evil by another complaint made of the numerous cases in which clerks brought forward in their defence forged letters purporting to come from Rome, and it empowered the bishops to imprison all offenders suspected of such practices until con-

[1] Hincmari Epist. 32 cap. 3, 20, 21, etc.

[2] Capit. Carol. Mag. ann. 794 cap. 4.

[3] Goldast. op. cit. III. 284.—Thomassin, Discip. de Église, P. III. liv. I. cap. 1.

sultation could be had with the Roman court[1]—a regulation evidently intended as an indirect mode of inflicting punishment on all who appealed from the local tribunals to the apostolic see. In 1018 the council of Seligenstadt sought to check the aggressiveness of Rome by a canon forbidding any one to journey thither without special permission of the bishop or vicar of his diocese.[2] The papal court, however, persisted in enforcing and extending its supremacy, and its interference called forth constant and well-founded remonstrances. About 1030 the Bishop of Angoulême excommunicated one of his flock, and refused to admit him to penitence until he should have rendered due satisfaction. The offender travelled to Rome and brought back a papal letter prescribing a certain penance for him, and requesting its approval by the bishop. The latter, however, boldly affirmed the letter to be a forgery, because it represented the pope as asking of him what it was his place to ask of the pope, and he turned the criminal unceremoniously out of the church. About the same period the prelates of Aquitaine were much annoyed by this constant interference with their jurisdiction, which destroyed all their authority, and in 1031 they assembled at Limoges, where, after a full debate, they agreed that the papal mandate should only be obeyed when the local tribunal had sent the offender to Rome, as often happened in doubtful cases, with letters asking the papal judgment as to sentences imposed; and that Rome had no right to interfere when her intervention was not requested by the provincial authorities.[3] The popes were not disposed to admit these claims of local self-government, and the bishops were loth to yield them, as we see when, in 1066, Alexander II. sharply rebuked Gervase, Archbishop of Rheims, for delaying two years in restoring to their functions two clerks who had made a successful appeal to him after condemnation at

[1] Concil. Tribur. ann. 895 can. 30.

[2] Concil. Salegunstat. ann. 1018 can. 16.

[3] Concil. Lemovicens. II. ann. 1031 (Harduin. T. VI. P. I. pp. 890–2).

home; and the invitation held out by promising immunity in such cases is well indicated in his declaration that "Rome is the only refuge for the oppressed, who are accustomed always to find there redress for their wrongs."[1]

The Normans in Italy were stubborn on this point, and refused to admit the right of appeal, until the treaty of peace in 1156 between William of Sicily and Adrian IV. granted it for Naples and Calabria, but still withheld it for Sicily.[2] The aggressive energy of Innocent III., however, and the distractions of the Germanic empire, finally caused the principle to be recognized in the law of nations. The charter of Otho IV. in 1209 admitted it in the fullest manner, and forbade any interference with those who desired to appeal to Rome from sentences in the local ecclesiastical courts;[3] and when the unfortunate Otho was to be overthrown, and his rival, Frederic II., substituted in his place, the price exacted of the latter for the papal recognition, in 1213, was the Golden Bull, or Constitution of Egra, in which the same formal recognition of the appellate power was inserted.[4] Frederic in 1219 repeated this for the benefit of Honorius III.; and in 1275 its confirmation formed part of the concessions whereby Rodolph of Hapsburg purchased the papal confirmation of the election which transformed him from a needy soldier of fortune to the head of the Holy Roman Empire.[5]

The appellate power thus finally became a jurisdiction, civil as well as criminal, over all cases to which ecclesiastics were parties, constituting Rome a court of last resort for all Christendom. It was not within the ability of finite intelligence to conduct so vast and complex a business, under its inevitable disadvantages, without causing infinite wrong; but abuses were profitable, and the Roman court was always needy. Occasionally a pontiff would admit the evils of the system, but it was never abandoned. Few confessions more

[1] Alex. PP. II. Epist. 39.
[2] Lünig Cod. Ital. Diplom. II. 854–5.
[3] Ibid. II. 707.
[4] Goldast. I. 289.
[5] Lünig op. cit. II. 715, 723, 727.

humiliating can be conceived than that made by Alexander IV. in 1256, when he issued a bull deploring the impunity afforded to concubinary priests by the facility with which letters were obtained from him reversing the judgments rendered against them at home; but the remedy devised for this was artfully contrived to preserve the fees of his court. He directed that no respect should be paid to any letters which he might grant, unless they set forth the circumstances of the case so fully as to show that they had not been issued in utter ignorance of the verdicts which they undertook to set aside[1]—thus admitting his own abuse of the powers assumed, while persisting in committing the wrong, and cheating those who bribed him for a pardon by neutralizing it after it had been paid for. He was willing that his court should attempt to do all the mischief that might be profitable, and threw upon the local prelates the responsibility of limiting that mischief, by discrediting the power of the keys which he professed to inherit from St. Peter and the Saviour. It would seem incredible that so shameless a confession could be made by the head of an infallible church, and yet within fifteen years the command was repeated in the same terms by Gregory IX.[2] In the fifteenth century, Cardinal Peter d'Ailly describes the prelates of his day as perpetrators of evil who were relieved from all salutary fear of the penalties imposed on their offences by the canons, and in the same way the inferior clergy were tempted into audacity of crime.[3]

Not only was the appellate power thus fatal in its influence on the discipline and morals of the church, but it was necessarily the source of illimitable injustice, enabling, as it did, a wealthy pleader to dictate terms of settlement to a poorer antagonist, who might not be able to endure the expense of carrying on a suit procrastinated amid the perpetually increas-

[1] Dalham Concil. Salisburgens. p. 104.

[2] Baluz. et Mansi III. 117.

[3] P. de Alliaco Canon. Reformationis cap. III. V. (Von der Hardt. T. I. P. viii. pp. 420, 429).

ing business of distant Rome. All these evils were keenly felt for ages, and at length, when the church marshalled itself at Bâle against the papacy, they formed one of the numerous subjects of reform unsuccessfully attempted. The council stigmatized the system as one of intolerable abuses and vexations, and descanted earnestly on the wrongs and endless litigation which it fostered. The remedy adopted was the conferring of final jurisdiction on all courts situated at more than four days' journey from Rome, except in cases specially reserved by the canon law for papal decision;[1] but it is easier to condemn a profitable abuse than to abolish it. Rome paid little heed to a regulation which would have limited her harvest of fees to Italian territory, although, after considerable delay, she was forced, in 1446, to give an unwilling consent that the Basilian canons should be enforced throughout the empire.[2] The abuse continued unchecked, and bore with almost equal severity on the laity and the church. As spokesman for the former, the Diet of Nürnberg, in 1522, complained of it with little ceremony in the list of grievances presented to Adrian VI.;[3] while the views of those churchmen who sincerely wished the purification of the establishment found a voice in the project of reformation drawn up by order of Paul III., which denounced in the strongest terms the innumerable scandals caused throughout Christendom by the facility afforded to ecclesiastics of escaping from the jurisdiction of their superiors, and of purchasing free pardons at the papal court.[4] The council of Trent made some effort to check the evil,[5] but the system was too profitable to be lightly abandoned, and it is scarce a hundred years since an honest German ecclesiastic, looking back with fond regret to the reforms attempted at

[1] Concil. Basil. Sess. xxxi.

[2] Hartzheim Concil. German. V. 301.

[3] Gravamina, art. 60 (Goldast. I. 474).

[4] Concil. de Emend. Eccles. (Le Plat Monument. Concil. Trident. II. 601).

[5] Concil. Trident. Sess. XIII. Decret. de Reform. cap. 1, 2, 3.—Sess. XXIV. Decret. de Reform. cap. 20.

Bâle, laments their failure—"Read, I pray you, these most admirable statutes, and compare with them the daily abuses arising from appeals!"[1] About the same time, indeed, the State Council of Castile, in opposing the pretensions of Rome, alludes to a case occurring not long before, in which the whole estate of a charitable foundation in the bishopric of Cuenca was sold by order of the Rota in order to pay the expenses incurred in Rome by a claimant to the benefice whose nomination was disputed, and who had carried the matter to the Holy See for settlement.[2] What the Roman court, however, has never been willing to abandon, was practically abolished by the reconstruction of society which followed the French Revolution.

It can readily be perceived how, during the Middle Ages, a jurisdiction so universal and so absolute as this gave to the papacy the unlimited and irresponsible control over the church and all its members, from the highest to the lowest.

PAPAL OMNIPOTENCE.

Closely connected with the recognition of this supreme jurisdiction, springing from the same principles, strengthening it and being strengthened by various mutual reactions, and extending the papal prerogative over every class of society, was the privilege of granting dispensation and absolution, which about the period of Carlovingian decadence commenced to elevate itself into importance. The power to bind and to loose was one capable of indefinite application, and more than human self-control would have been requisite to abstain from assuming

[1] Wurdtwein Concil. Mogunt. p. 18.

[2] Consulta del Consejo, Oct. 30, 1761. (MS. Bib. Reg. Hafniens. No. 216 fol.)

a prerogative so eagerly ascribed to the papacy by those who saw their own advantage in procuring its recognition. At the commencement of the ninth century we see but little of it, and the swift justice of Charlemagne would hardly have stayed her pace, because her victim had sought refuge and impunity at the feet of Adrian or of Leo. As the secular power declined, however, and men saw how it shunned a conflict with the rising influence of St. Peter, they naturally turned to the latter as an ægis ever ready to confer protection on those whose intelligent reverence counter-balanced their misdeeds; while every instance of successful interference of course attracted numerous additional suppliants for similar favors. In 861, Nicholas I., on the authority of an Isidorian decretal (*Pseudo-Alexandri Epist.* 1), released Thietgaud of Trèves and his clergy from a disagreeable oath by which they had bound themselves, and he assumed the power of declaring them discharged from any civil or criminal liability for the consequences.[1] When John VIII. could write to Charles le Chauve and the Bishop of Chartres in favor of a murderer, and declare that the length of his journey and the depth of his repentance entitled him to a free pardon, to restitution to all his benefices, and to protection against the family of the slain,[2] it is no wonder that Nicholas I. was able to exclaim with pride that criminals from all parts of the world flocked to Rome to obtain pardon and escape retribution for their deeds.[3] That this does not allude merely to spiritual absolution is evident from the occasion on which it was written, being a demand for the pardon of Baldwin of Flanders, who, after carrying off Charles's daughter Judith, had fled to Rome to escape the penalties, civil and ecclesias-

[1] Nicolai PP. I. Epist. 10.

[2] Joann. PP. VIII. Epist. 39, 40. Cf. ejusd. Epist. 92; Nicolai PP. I. Epist. 136.

[3] Nicolai PP. I. Epist 22. "Et quoniam ad hanc sanctam Romanam . . . . Ecclesiam, quæ ob sui privilegii principatum. . . . . de diversis mundi partibus quotidie multi sceleris mole oppressi confugiunt, remissionem scilicet et venialem sibi gratiam tribui supplici et ingenti cordis mœrore poscentes."

tical, denounced against him by the justly exasperated father. The immense number of these pilgrimages, as described by Nicholas, proves that they were not fruitless, for the experience alone of success would induce multitudes to undergo the perils, privations, and expense of so long and dangerous a journey; and it is easy to imagine the effect of the return of a rehabilitated criminal among his friends, conveying to the remotest corner of Christendom the influence of Rome as overriding the laws and justice of the secular courts; nor would the inference be uncharitable that the popes had already discovered in this prerogative the source of a notable augmentation of their revenues. It seems almost incredible that a power like this should be formally recognized and admitted by the secular lawgivers, and yet in the Welsh laws of the ninth century there is a provision that in some classes of crimes, such as waylaying and treason, which involved the punishment of death and confiscation, if the criminal could manage to escape to Rome, and return with a papal letter of absolution, his life should be spared and his property be restored to him on payment of a fine.[1]

The final result of this is seen in the "Taxes of the Penitentiary"—the official scale of prices at which absolutions could be purchased at the papal court, first drawn up by John XXII., and perfected by Leo X. Repeated editions of these lists were printed and circulated throughout Europe during the fifteenth and sixteenth centuries, until the controversial use made of them by Protestant writers caused them to be suppressed. According to this tariff, a layman who had committed simony was absolved on payment of six grossi (the grosso was one-tenth of the ducat), while it cost a priest seven; the priest who falsified papal letters had to pay eighteen, while a bastard could procure for twelve a dispensation enabling him to take orders and hold preferment. Nor was this reali-

[1] Dimetian Code, Bk. II. chap. xxiii. § 25. (Owen's Ancient Laws, etc., of Wales, I. 551.)

zation of the treasure of salvation confided to the church confined to ecclesiastical offences, for all the crimes of the Decalogue were reckoned at their appropriate figures, which were by no means extravagant. Thus a man who had killed his father, his mother, his brother, or his sister, could obtain absolution at from five to seven grossi per parricide, with the provision that, if one of the victims chanced to be a clerk, he was obliged to visit Rome in person to purchase the absolution.[1] It is safe to say that a more scandalous exhibition of cynical venality may vainly be sought for in the annals of human misgovernment.

It is hardly to be wondered at that the Emperor Ferdinand complained in 1562 to the Council of Trent that many of the papal dispensations issued from Rome were a public scandal, which diminished and dishonored the papal authority and brought all dispensations, even those which were legitimate, into contempt.[2]

While thus acquiring unlimited control over the populations, the papacy was likewise rapidly extending its supremacy over the secular rulers. The most efficient instrument in this was perhaps the forged donation of Constantine to Sylvester I. In examining this remarkable document one scarcely knows which most to admire—the consummate boldness that could anticipate belief in it, or the credulity that was ready to admit

[1] The "Taxæ Sacræ Pœnitentiariæ" have been frequently reprinted in modern times. The earliest of these reprints I believe to be that at the end of the "Statuta Synodalia a Wenceslao Episc. Wratislaviensi a. 1410 publicata," printed by Joh. Christ. Friedrich, Hanover, 1827. Dr. Gibbings' edition (Dublin, 1872) has a learned introduction; and that of A. Dupin de Saint-André (Paris, 1879), a French translation. In 1820, M. Juhen de Saint-Acheul printed what purports to be the same, under the title of "Taxes des Parties Casuelles de la Boutique du Pape," which went to a second edition in 1821, being a reprint of the edition of Lyons of 1564. The text in these (as well as in the editions of 1607 and 1744) is taken from that of Wolfgang Musculus of 1560, which differs somewhat from the ancient versions.

[2] Le Plat Monument Concil. Trident. V. 239.

that the first Christian Emperor transferred the seat of empire and founded his new Rome for the single purpose of relinquishing to the popes the sole and undisputed possession of the West, and of rendering the successors of St. Peter the legitimate heirs and successors of Augustus. We read, in the style of an eighth-century notary, a formal *donation-entre-rifs* of the Western Empire and its appurtenances, to be held and enjoyed with all the imperial rights in independent sovereignty, as superior to that of the emperors as spiritual things were superior to temporal—and all this mingled with puerile directions as to the trappings and stage-properties of the pope and his spiritual court, crowns, white horses, linen garments, and felt shoes. Armed with such title-deeds, and the Leonine constitution, which barred all alienation of church property, the Roman Pontiff became the rightful owner of Western Europe, and kings held their territories only by his sufferance. The gratitude of Adrian I. for the comparatively insignificant beneficence of Charlemagne was too openly manifested for us to suppose that ideas of such magnificent acquisitiveness could then have been entertained. Appetite grows by what it feeds on, however, and when, a few years later, in 776, this extraordinary document was produced from the papal manufactory, it was quoted timidly by Adrian to the Frank as a hint that he might not improperly imitate a munificence alongside of which his generosity was absolute niggardness.[1] To this the stern founder of the new empire turned a deaf ear, nor does his disregard of the claims thus advanced appear to have interfered with the good understanding between the respective heads of church and state, whose mutual support was mutually necessary. His successor, Louis, with all his reverence for ecclesiastical authority, paid as little respect to the extravagant pretensions of the grant; and when he, too, in 817, made a donation to the Holy See, confirming the gifts of Charlemagne and of Pepin, he took care to reserve to himself the

[1] Cod. Carolin. No. LX.

sovereignty of the territories whose usufruct he bestowed on St. Peter.[1] That this sovereignty was not merely nominal, but active, is sufficiently established by facts already alluded to; but if more be needed, it may be found in the edict of Lothair, in 824, wherein, while enjoining on the inhabitants of the Roman territory the utmost respect and obedience to the pope, his instructions to the dukes, counts, and judges, with regard to the exercise of their functions, and his appointment of *Missi* to supervise their dispensing of justice, prove the complete jurisdiction which he exercised without protest or objection on the part of Eugenius.[2] If the strong government of the united Franks, however, repressed the aspirations of ambitious but prudent pontiffs, the dissensions which ensued,

[1] "Salva super eosdem ducatus nostra in omnibus dominatione, et illorum ad nostram partem subjectione" (Decret. Confirmat. Ludov. Pii). This clause, and a succeeding one by which the emperor reserves the right of interference in cases of tyranny and oppression, dispose me strongly to regard the document as genuine. Had it been fabricated in the eleventh century, as has been suggested by critics, Catholic as well as Protestant, these expressions would certainly not have been inserted, as they are directly in conflict with the efforts then making to free Italy from Teutonic domination, and to release the Holy See from the traditional supervision of the emperors. The abnegation of the right to confirm the papal elections is probably an interpolation of the latter period, as also the extensive donations of territory in central and southern Italy, which either was retained by the Carlovingian emperors, or else never belonged to them. These concessions suited exactly the politics of the successors of Gregory VII., and their insertion has doubtless swelled what was a very simple confirmation of the benefactions of Charlemagne into the formidable dimensions which have caused its rejection by candid historians of all parties. Muratori's apologies for his incredulity (Annali d'Italia, ann. 817) may excite a smile; but an opposite emotion is aroused by the confident assertion of Baronius (ann. 817, No. 14) that four authentic copies exist in the Vatican MSS. The attempted extension of territorial acquisition may be classed with the similar fictitious donation of Charlemagne, which Anastasius had before him (Anastas. Biblioth. No. 97), but which has since been seen by no one. "Janus," indeed (Pope and Council, p. 137), considers this latter genuine, but that it was obtained from Charlemagne by fraud and subsequently disregarded by him.

[2] Baluze, II. 317–20.

and the final disruption of the empire, afforded the opportunity which was needed. This forgery, lying latent with those of Ingilram and Isidor, was roused from its slumbers; and, though the Saxon emperors might venture to call it in question, for more than half a thousand years the imperial liberality of Constantine was received as an undisputed fact, which it was rank heresy to call in question.[1] It did not require much ingenuity to assume that the imperial dignity was enjoyed by the popes from the time of Constantine until Leo conferred it upon Charlemagne, and, when the ideas of feudalism were paramount, the corollary naturally followed that the emperors held it in some sort as a fief of the church, and were thereby

[1] About the year 1000, Otho III., in a grant to Sylvester II., takes occasion to stigmatize the donation of Constantine as a fiction: "Hæc sunt enim commenta ab illis ipsis inventa, quibus Joannes diaconus, cognomento digitorum mutius (mutilus) præceptum aureis litteris scripsit, sub titulo magni Constantini longa mendacii tempora finxit. . . . Spretis ergo commenticiis præceptis et imaginariis scriptis, ex nostra liberalitate sancto Petro donamus quæ nostra sunt, non sibi quæ sua sunt veluti nostra conferimus." (Baronius, ann. 1191, No. 57.) And not long after, in a donation of St. Henry II., confirming the previous liberalities of the emperors, no mention is made in the recital of Constantine's gift, showing that it was still regarded as suppositititious (Lünig Cod. Ital. Diplom. II. 698).

This soon passed away, however, and any doubt as to the authenticity of the donation was assumed to spring from unworthy enmity to the just claims of St. Peter. About the year 1150 Geroch of Reichersperg writes: "Memini enim cum in urbe Romana fuissem, fuisse mihi objectum a quodam causidico ecclesiæ Dei adversario, non esse rata privilegia imperatoris Constantini ecclesiasticæ libertati faventia, eo quod ipse vel baptizatus vel rebaptizatus fuisset in hæresi Ariana, ut insinuare videtur historia tripartita." (Geroch. Expos. in Psalm. LXIV.) The reviving study of the imperial jurisprudence might well cause a shrewd lawyer to doubt the obsequiousness of a Roman emperor, but he found it prudent to justify his incredulity by the Arianism of Eusebius of Nicomedia, from whom the emperor on his death-bed received the rite of baptism.

The stubborn vitality infused into these forgeries by their success in establishing the papal power is shown by the learned Christian Wolff, as late as the close of the seventeeth century, alluding to the donation of Constantine with as much confidence as though its authenticity had never been questioned (Chr. Lupi Opp. II. 261).

bound to the popes as to their suzerains.[1] To the mediæval mind an argument such as this was well nigh irresistible.

The man was not wanting to the opportunity. The circumstances which I have briefly sketched had placed in the hands of the church weapons of vast and indefinite power. The times were ripe for their employment, for the necessities of the age demanded an intellectual tyranny to coerce and counterbalance the countless blind and aimless despotisms of individual chieftains, who were rapidly crushing out what little mental life was left in Europe. The arm to wield these weapons was found when Nicholas I. ascended the pontifical throne. To the service of the cause he brought a dauntless spirit, an unconquerable will, an unbending energy, a prudent daring, and a knowledge of the men and the tendencies with which he had to deal, that enabled him to establish as absolute rights the principles which had previously been more or less speculative.[2] The history of the Divorce of Teutberga, which marks an era in ecclesiastical annals, is a fair illustration of the manner in which he reduced to practice the theories of the False Decretals, and laid the foundation of that papal omnipotence which was to overshadow Christendom.

On the retirement of the emperor Lothair, his son of the same name succeeded to that portion of his dominions which took from him the appellation of Lotharingia, modernized into Lorraine, and extending from Switzerland to the mouths of the Rhine. Married in 856 to Teutberga, the uncontrolled licentiousness of the young king led him within the next year to abandon her for a succession of concubines, one of whom, Waldrada, with whom he had had relations previous to his marriage,

[1] See the Bull of Clement VI. accepting Charles IV. as emperor.—Cod. Epist. Rudolphi I. Auct. II. p. 369. (Lipsiæ, 1806.)

[2] The churchmen of his own period, when not themselves outraged by his imperious authority, recount his exploits with honest professional pride. "Regibus ac tyrannis imperavit, eisque aesi dominus orbis terrarum authoritate præfuit."—Regino ann. 868.

succeeded in permanently captivating his fickle passions and weak understanding. The favorite resolved to share her paramour's crown, and Lothair, ready to secure her smiles at any cost, entered eagerly into a disgusting conspiracy. A charge of the foulest incest was brought against the unhappy queen, who, by means which can readily be guessed, was forced to a confession. Condemned to perpetual penance in a convent by the Lotharingian prelates at the synod of Metz, she succeeded in escaping to France, where she was duly protected by Charles le Chauve, with the true Carlovingian desire of nursing trouble for his nephew. Meanwhile Lothair caused another synod to be assembled at Aix-la-Chapelle, where, on stating his piteous case, deprived of his wife and unable to restrain his passions, the charitable bishops, after due deliberation, declared that a woman stained with the crimes confessed by Teutberga was not canonically a wife, and that he was at liberty to marry. His nuptials with Waldrada were immediately celebrated, and Gunthair, Archbishop of Cologne, the instigator and manager of the plot, received his appropriate reward in the dishonor of a niece, whose promised elevation to the throne had been the prize held out for his co-operation. Lothair, in his pollution, might forget the world, but the world did not forget him. His uncle, Charles le Chauve, hankering after the fertile plains of Austrasia, began to hint that his nephew had forfeited all claim to human society, and Teutberga's powerful family urged her to appeal to the central arbiter at Rome. The occasion was one in which the common feelings of mankind would excuse any stretch of avenging prerogative, and Nicholas seized it with vigorous joy. The comparison is instructive between his alacrity and the prudent reticence of Adrian in the previous century. A moralist would find it difficult to draw the line between the connubial irregularities of Charlemagne and those of Lothair; but Hermengarda found no puissant pope to force her inconstant husband into the paths of dissimulation, or to justify wrong by cruelty. When Charlemagne grew tired of a wife, he simply put her aside, nor would Adrian or Leo have

thanked the meddling fool who counselled interference. But times had changed since then, and other principles had gained supremacy. According to Isidor, the holy Calixtus I. had decreed that an unjust decision, rendered under the pressure of kings or potentates, was void[1]—an axiom which, however morally true, caried with it the dangerous corollary that, if it meant anything, there must be some one to decide upon the injustice of the sentence. If a king had procured it, the only arbiter to revise it was the pope, to whom a canon of Ingilram's had specially attributed the power of abrogating at will the proceedings of any local synod.[2]

As supreme judge of all questions, Nicholas accordingly addressed himself to the work. To his first legates Lothair simply responded that he had only complied with the decrees of the national synod; and the legates, heavily bribed, advised him to dispatch to Rome Gunthair, with his tool Thietgaud, Archbishop of Trèves, who could readily make all things right with the Holy Father. The legates, on their return, had to seek safety in flight from the indignation of Nicholas; but the two archbishops, in the self-confidence of craft and stupidity, appeared before a synod called for the purpose, and presented the acts of the synods of Metz and Aix, in the full expectation of their authoritative confirmation. The deliberation was short; the two archbishops were recalled to hear sentence of deposition from their sees, and degradation from the priesthood; the synod of Metz was stigmatized as "tanquam adulteris faventem, prostibulum;" and a sentence of excommunication was suspended over the heads of all the Lotharingian prelates, to be removed only by prompt retraction of their acts, and individual application to the pope. The proceeding

[1] Injustum ergo judicium et definitio injusta, regio metu et jussu, aut cujusdam episcopi aut potentis, a judicibus ordinata vel acta, non valeat.—Pseudo-Calixti Epist. 1 (Ivon. Decret. P. v. cap. 235). Benedict the Levite gives it in a somewhat abbreviated form (Capitul. Lib. v. cap. 405) from Ingilram can. 78.

[2] Ingilram. can. 42.

was somewhat violent, as it amounted to condemnation in the absence of the accused, with no array of witnesses and evidence such as the canons required, even the acts of the Lotharingian synods not having been acknowledged by the archbishops without equivocation. Gunthair, breathing furious revenge, and Thietgaud, stupefied by the blow, betook themselves at once to the Emperor Louis, Lothair's brother. He listened to their story, and eager to avenge his brother, and to suppress the rising insubordination of the pontiff, he marched directly on Rome. The fasts and prayers of Nicholas availed little against the reckless soldiery of Louis; a massacre ensued, and the pope, escaping in a boat across the Tiber, lay hidden for two days, without meat or drink, in the cathedral of St. Peter. A sudden fever, however, opportunely laid hold of the emperor, and there were not wanting counsellors who attributed it to the sacrilege which he had committed. Louis, therefore, sent for Nicholas, made his peace, and withdrew, commanding the archbishops to return home and consider themselves degraded. Thietgaud, a fool rather than a knave, submitted without further resistance; but Gunthair addressed an epistle to his brother bishops, exhorting them to repel the encroachments of the papacy, which was aspiring to the domination of the world, and retorting on the pope his sentence of excommunication. This document his brother Hilduin, an ecclesiastic, laid on the tomb of St. Peter, after forcing an entrance with arms, and killing one of the guards. On their return home, Thietgaud abstained from officiating, but Gunthair, still threatening vengeance, took possession of his diocese, until the frightened Lotharingian bishops induced Lothair to depose him, while they individually and humbly made their peace with Rome, by submitting to all the requisitions of the pontiff.[1] Another

[1] It is interesting to mark the contrast between the independence of the first half of the century and the submission of the second half. When, thirty years before, Gregory IV. came to the Field of Falsehood in the train of Louis le Débonnaire's rebellious sons, the bishops of Louis's party stoutly declared that if he came to excommunicate, he should re-

legate, Arsenius, was sent with instructions to enforce the threatened excommunication of Lothair, if he persisted in iniquity, and with letters to Charles le Chauve and Louis le Germanique, denouncing the conduct of their nephew with an acerbity till then unknown in the intercourse between popes and kings.[1] Lothair felt himself unable to face the storm which he had aroused. He professed himself in all things an obedient son of the church, he put away Waldrada, who promised to seek absolution in Rome, and he took back the unfortunate Teutberga, under menaces of eternal punishment in the name of God and St. Peter. Then suddenly all was again confusion, as untamed human passions struggled against the unaccustomed bonds. Waldrada escaped from the custody of Arsenius and returned to her infatuated lover, while the queen was subjected to every kind of humiliation and oppression. But Nicholas was equal to the strife which he had provoked, and on which he had staked the future of the papacy, and, indeed, of Christian civilization. Waldrada he excommunicated. Charles le Chauve, with whom Teutberga had again taken refuge, he encouraged with a laudatory epistle, mingled with threats concerning a rumored arrangement by which an abandonment of her cause was to be purchased by a cession of territory; and,

turn excommunicated, as he had no such authority under the ancient canons of the church—"nullo modo se velle ejus voluntate succumbere, sed si excommunicaturus adveniret, excommunicatus abiret, cum aliter habeat antiquorum auctoritas canonum" (Astron. Vit. Ludov. Pii cap. xiv.). The fact that in the two cases the respective positions of right and wrong were reversed between the two parties, makes no difference as regards the question of obedience and subordination.

[1] Hincmar, notwithstanding his zeal for the church, and his active sympathy for Teutberga, calls attention to the altered tone of the pontiff towards crowned heads, and evidently disapproves the bullying invective inaugurated by Nicholas, which subsequently proved so potential—"Non cum apostolica mansuetudine et solita honorabilitate, sicut episcopi Romani consueverant in suis epistolis honorare, sed cum malitiosa interminatione . . . . epistolam Nicolai Papæ plenam terribilibus et a modestia sedis apostolicæ antea inauditis maledictionibus."—Annal. Bertin. ann. 865.

in spite of the interference of the Emperor Louis, he caused another synod to confirm the degradation of the delinquent archbishops. Teutberga herself, worn out by seven years of persecution, petitioned the pontiff for peace, and begged to be separated from Lothair, that she might end her days in quiet; but the victory was not yet gained, and Nicholas scornfully refused her request. An endeavor of Lothair to settle the question by appeal to the wager of battle was rejected with indignation, and for the third time he ordered the timid prelates of Lotharingia to enforce the sentence of excommunication pronounced against the aspiring concubine. Commands were addressed to Louis le Germanique to join in the pressure on Lothair, and to desist from his intercession in behalf of the deposed archbishops, while the prelates of Germany received a sharp reproof for joining in the appeal.

The opposition of monarch and prelate was at last broken down, and Waldrada was forced to Rome; but before his triumph was complete Nicholas died, leaving to his successor Adrian II. the legacy of this quarrel, and the widening schism of the Greek church, which he had rashly provoked. Lothair, hoping to find the new pope more considerate of the regal dignity, intimated a desire to visit Rome in person, to justify his course, and to be reconciled to the church. Less imperious than his predecessor, Adrian welcomed the apparently repentant sinner. The excommunication of Waldrada was removed on condition of absolute separation from her lover; and, that Lothair's journey might be impeded by no pretext, epistles were addressed to Charles and Louis, commanding them not to trouble Lotharingia during the pious absence of its king. An honorable reception awaited Lothair. He was admitted to communion on the oath, which no one believed, that he had obeyed the commands of Nicholas as though they had been those of Heaven, and had abstained from all intercourse with Waldrada. The victory of the pope was as complete as the abasement of the king. The sacrament was administered as an ordeal, in which the courtiers of Lothair were associated as

accomplices in his guilt, and both parties separated, equally satisfied with the result. A still further triumph, however, was reserved for the church by one of those mysterious occurrences which account for the belief, then universally prevalent, of special interpositions of Providence. Lothair was scarce fairly started on his return home, when his progress was arrested at Piacenza by an epidemic which broke out among his followers; and there, after a short illness, died the miserable young king and his partners in guilt. Of course, the effect was prodigious. Divine justice had completely vindicated the acts of Nicholas and Adrian; and God himself had condescended to execute the sentence of the church on the hardened adulterer, who had sought to shield himself by sacrilegious perjury from the punishment due to his offences.[1]

The papacy had thus triumphed over both church and state, and Heaven had sanctioned the immense extension of prerogative. The principle was asserted and maintained, that an appeal to the ecclesiastical jurisdiction barred all subsequent reclamation to the ordinary tribunals[2]—a doctrine capable of infinite application and illimitable results. By deposing and degrading Gunthair and Thietgaud, without a preliminary trial at home, without an accuser, and without the ordinary judicial formalities, Nicholas erected himself into a judge of first and last resort, without responsibility and without appeal—the sole arbiter of destiny for the highest dignitaries of the hierarchy. By annulling the acts of the Lotharingian synods, and forcing their members not only to submit to this, but humbly to apologize for the iniquity of their decrees, he established a complete ascendency over the provincial prelacy, and vindicated the

[1] The Annal. Bertin., Regino, the Epistles of Nicholas I., and the works of Hincmar, furnish abundant materials for this history, of which I have only sketched the salient points.

[2] "Quia ecclesiæ refugium quærens, et ecclesiasticum judicium semper expetens, sæculari non debet submitti judicio"—Nicolai PP. I. Epist. 148.—We here see the practical application of the interpolation of the Theodosian Code, Lib. XVI. Tit. 12.

supremacy of the Holy See as the only irrefragable authority in the church. Nor was the victory over the secular power less complete. When Lothair appeared before the papal legates to answer the appeal of Teutberga, he acknowledged the jurisdiction of popes over monarchs; and however he might subsequently dissemble, he never afterwards dared to deny it, each step only serving to confirm that jurisdiction in its most absolute sense. And when Adrian threatened the kings of France and Germany, and ordered them not to interfere with Lotharingia during the absence of their nephew, he placed himself at the head of Christendom, as the self-constituted sovereign of sovereigns. The moral effect was not less decisive. An unarmed priest, unable to protect his palace or his person from the brute force of his enemy, Nicholas, under the guardianship of Heaven, walked without swerving along the path which he had marked out, over the prostrate necks of kings and prelates, clothed only in the mysterious attributes of his station, and invoking the Most High in the name of truth and justice. What wonder that the populations should revere him as the Vicegerent of Christ, as the incarnate representative of God, and that the most extravagant pretensions ascribed to him by Ingilram or Isidor were regarded as his legitimate and imprescriptible prerogatives?

It will be observed throughout this affair, that the weapon relied upon to enforce obedience was the deprivation of communion, involving, in the case of ecclesiastics, degradation from their benefices, and in that of laymen, exclusion from the Christian church. It was in this that the power to bind and to loose found its readiest practical expression, and the control which the church thus acquired over the life of man in this world and his salvation in the next, opened out before it a career of boundless supremacy which will be considered in a subsequent essay.

Yet it must not be supposed that the vast powers thus successfully asserted by Nicholas and Adrian descended in an unbroken line from them to Innocent III. Society was still

too rude, and its anarchic elements too tumultuous, to submit without many struggles to the absolute despotism of influences purely spiritual and moral. Its protest against subjection took many and various forms, and the vices and weaknesses of the clergy seemed at times to postpone indefinitely the ultimate triumph. The tenth century was yet to see the darkest period in papal annals, infamously illustrated by Marozia and John XII., when the Holy Father was the puppet of any savage noble who could control the miserable population of Rome. Whatever wrongs Italy may have suffered from the Tedeschi, the world yet owes to them that Teutonic power rescued the papacy from this degradation, and placed it in hands less incompetent to discharge the weighty trust. Blindly working for the present, the Saxon and Franconian Emperors little thought that they were elevating an influence destined to undermine their own, or that the doctrines of Isidor, in the mouth of a priest, would break the power of an iron Kaiser, the warrior of sixty battles.

BENEFIT OF CLERGY.

AMONG the most important and dearly-prized privileges of the church was that which conferred on its members immunity from the operation of secular law, and relieved them from the jurisdiction of secular tribunals. Not only did they thus acquire a peculiar sanctity, which separated them from the people and secured for them veneration, but the personal inviolability thence surrounding them gave them enormous advantage in all contests with the civil power. Secure in this panoply of privilege, they could dare all things. Amenable only to divine law, the statutes of emperors and kings were to them but the idle breath of men; the church was independent of the civil power, and in its aggressive enterprises it occupied a vantage-ground of incalculable value.

So priceless a prerogative was not obtained without a long and resolute struggle. That dispute arising between ecclesiastics should be settled by the arbitration of their bishops seemed not unreasonable, and from an early period it was the established rule of the church that all such questions should be so settled;[1] but to ask that a monk or priest guilty of crime should not be subject to the ordinary tribunals, and that civil suits between laymen and ecclesiastics should be referred exclusively to courts composed of the latter, was a claim too repugnant to the common sense of mankind to be lightly accorded.

[1] See, for instance, the elaborate provisions of Concil. Chalced. can. 9.

The respect due to the sanctity of the episcopal functions was the entering wedge, and for this antiquity was claimed, coeval with the revolution by which Christianity and the church became recognized by law. If the account given by Rufinus be correct, when the Nicene council was assembled for the condemnation of Arius, and the holy fathers, neglecting that duty, busied themselves only with mutual criminations and accusations, Constantine ordered them to hand him all their *libelli* of complaint, and then addressed them: "God has constituted you His priests, and has given you authority to judge us, but you are not to be judged of men. Wherefore await the decision of God between you, and keep your quarrels, whatsoever they be, for His decision alone. For you are gods, given to us by God, and it is not fitting that man should pronounce judgment on gods." Whereupon he ordered the accusations to be burned without examination, and commanded the bishops to proceed with the business of the council.[1] It may well be assumed, however, that Rufinus has exaggerated what probably was only a polite form in which the shrewd and politic emperor veiled the reproof which he administered, and the sarcasm which lurked in his deferential assumption that they were worthy of the tribute which he rendered to their office. Sozomen, in fact, gives what is doubtless a truer account, in stating that Constantine merely remarked that it did not become him as a man to decide between them.[2] Whatever may have been his precise form of speech, he merely desired to expedite the business of the council and to elude the annoyance of arbitrating in so many obscure quarrels. That

[1] Rufini Hist. Eccles. Lib. I. cap. 2. This blasphemous expression was embodied textually in the Capitularies of Benedict (Lib. v. cap. 315), and was made the basis of extravagant pretensions, without apparently observing that it destroyed ecclesiastical as fully as secular jurisdiction over prelates. It continued to be quoted, till after even the Council of Trent, as the foundation-stone of clerical immunity. See Concil. Salisburgens. ann. 1569 Const. xxxix. cap. 1.

[2] Hist. Eccles. Lib. I. cap. 16.

he waived the right to treat his bishops as his subjects is impossible, when we find him not long afterwards threatening to punish St. Athanasius for disobedience by removing him from the see of Alexandria, without even the form of a trial, and warning him that he would be replaced with a more pliable successor.[1]

It is true that, in 355, Constantius embodied in a law the principle that bishops could only be tried by bishops.[2] This, however, shows that no such legal custom pre-existed, and even this was for a temporary purpose, arising, like the Sardican canons, from the Arian schism, and it was only of temporary authority. It cannot have been more, for in 376 a constitution of Gratian expressly reserves to the secular tribunals all cases concerning ecclesiastics, except in matters relating to religion and those of trifling importance.[3] A law of Honorius in 412, and one of Valentinian III. in 425,[4] are more favorable to ecclesiastical pretensions, and were strenuously urged in the ninth century to support the claims of the church to immunity; but the former may safely be assumed to refer only to ecclesiastical matters, while the latter was doubtless extorted by the powerful church party from the youthful emperor and his mother Placidia immediately after the overthrow of the usurper John. That it was opposed to the received jurisprudence of the age and was not long allowed to remain in force is shown by an edict of the same emperor in 452, which expressly declares that the imperial laws subject to secu-

[1] Socrat. Hist. Eccles. Lib. I. cap. 20. Marsiglio of Padua, in the fourteenth century, does not fail to perceive that the jurisdiction over the clergy granted to the pope in the Donation of Constantine, implies that such jurisdiction had belonged previously to the Emperor, and was not of divine origin. The forgery proved too much.—Marsilii Patav. Defens. Pacis. P. II. cap. xi.

[2] Lib. XVI. Cod. Theod. Tit. ii. l. 12.

[3] Ibid. l. 23. This shows that the law attributed to Constantine by Sozomen (Lib. I. cap. 9), granting to clerical defendants the right to elect episcopal judges, either never existed or else was only of temporary authority.

[4] Ibid. ll. 41, 43.

lar jurisdiction all classes of the clergy, from bishops down, the only exception being that a prosecutor, if himself a layman, was allowed to select an ecclesiastical tribunal in which to bring his action;[1] and in 468 a law of the Emperor Leo shows that churchmen were by no means exempt from the ordinary jurisdiction.[2]

Meanwhile the church had not been lacking in efforts to maintain exclusive jurisdiction over the affairs of its members, and severe penalties were denounced, in 397, by the third council of Carthage, against all clerks who should voluntarily appeal to the secular tribunals in either civil or criminal cases, on account of the disrespect thus manifested towards their own officials. At the same time the council could not control cases in which they were prosecuted by laymen, and as it enumerates bishops among those who might justify themselves before lay judges the canon shows that the exemption attributed to Constantine probably never existed, while the privilege granted by Constantius had fallen into desuetude, presumably on account of its heretical intent.[3] Even in strictly ecclesiastical concerns the church could not maintain an independent jurisdiction, for at Chalcedon, where its totality was represented in the most potent form, under the boasted presidency of papal legates, the absolution of the five bishops who abandoned their Eutychian tendencies was conducted by the imperial commissioners acting under direct instructions from the emperor; and the condemnation of Dioscorus of Alexandria required the imperial assent before it could take effect.[4] Towards the close of the century Gelasius might gratify himself by asserting that churchmen could be tried only in ecclesiastical courts;[5] but the empti-

[1] Novell. Valent. III. Tit. xxxv. § 1. A law in the Theodosian Code (Lib. xvi. Tit. xii. l. 3) might likewise be cited, but its authenticity is doubtful.

[2] Const. 33 Cod. i. 3.

[3] Concil. Carthag. III. ann. 397 can. 9.

[4] Concil. Chalced. Act. iv. (Harduin II. 414).

[5] Gratian. caus. xi. q. 1 can. 12.

ness of this boast was shown when Theodoric formally proclaimed that the Bishop of Rome himself was not exempt from trial and condemnation at the command of his sovereign,[1] a principle which the Ostrogoth did not hesitate to put in force against both Symmachus and John I. It is to this period that critics attribute the fabrication of the account of the trial of Sixtus III. by an assembly of bishops;[2] and of the elaborate forgeries of Sylvester's epistles, which enunciate distinctly the principle of clerical immunity,[3] especially that of the popes,[4] and it was probably done as a protest against the proceedings of Theodoric. If so, they failed of their purpose, for not long afterwards under the Catholic Justinian there was quite as little scruple shown when Belisarius convicted Pope Silverius on a fabricated charge of treason.[5] A step, indeed, had been gained when another Arian sovereign, Athalaric the Ostrogoth, granted that any suit or prosecution against a Roman ecclesiastic should be brought before the pope; but it was rendered virtually nugatory by the freedom allowed to the plaintiff to appeal from the decision to the secular magistrates.[6]

The privilege attributed to Constantine and attempted by Constantius was finally established by Justinian, who conceded to the episcopal dignity the right to have episcopal judges; but as he carefully reserved the imperial prerogative to disregard the exemption, the principle of ecclesiastical subordina-

[1] Goldast. Const. Imp. III. 613. At the same time Theodoric does not seem disinclined to favor ecclesiastical jurisdiction, for we find him sending for trial to Eustorgius, Bishop of Milan—"cujus est et æquitatem moribus talibus imponere"—some priests charged with perjury and false witness of an aggravated character (Goldast. III. 32)—offences which, in the legislation of Justinian, were specially reserved for the secular courts.

[2] Expurgat. Sixti PP. (Harduin. II. 1742).

[3] Migne's Patrol. T. VIII. p. 826.

[4] Concil. Roman. sub Silvest. can. xx. (Ibid. p. 840).

[5] Anastas. Biblioth. No. 60.

[6] Athalar. Const. XVI. (Goldast. III. 98).

tion was preserved intact,[1] and the deposition and banishment of numerous bishops for their contumacy respecting the Three Chapters, in the exciting Monophysite controversy, show how freely he exercised his power, even in matters of faith.[2] While thus jealously guarding the supremacy of the crown, however, he was disposed to favor the autonomy of the church, and in 539 he placed the monasteries under the sole control of the bishops, in order that their hallowed precincts should not be profaned by the sacrilegious intrusion of secular officials.[3] A few months later, at the solicitation of Mennas, Patriarch of Constantinople, he ordered that all civil suits against ecclesiastics should be brought before their bishops, with recourse to the state tribunals only when the prelate was unable to arrive at a decision. Criminal prosecutions, however, were reserved for the civil magistrates, except in minor offences;[4] and there is nothing to warrant the belief that a clerical plaintiff could select a judge of his own order.[5] The result of these favors was apparently not satisfactory, for a few years later the privilege was practically nullified by allowing the largest liberty of appeal to the secular tribunals from such episcopal decisions.[6]

In Italy, the popes took care to enunciate with sufficient frequency the principle that an ecclesiastical defendant was entitled to be tried in his own court;[7] and that they succeeded is shown by an order of Gregory the Great, directing that hospitals shall be placed under the charge of ecclesiastics only, to exempt them from the jurisdiction of the secular tribunals which otherwise might trouble and pillage them.[8]

The regions subjected to the Burgundians and Wisigoths,

[1] Novell. 123 cap. 8. "Nisi princeps jubeat."

[2] Victor. Tunenens. Chron. ann. 551.

[3] Novell. 79.

[4] Novell. 123 cap. 20.

[5] Novell. 83.

[6] Novell. 123 cap. 21.

[7] Gregor. PP. I. Regist. Lib. VI. Epist. 11; Lib. XI. Epist. 77. Gratian. Caus. XI. q. 1 can. 11, 12, 38, 39, 40.

[8] Gregor. PP. I. Regist. Lib. IV. Epist. 27. "Religiosi dumtaxat, quos vexandi judices non habeant potestatem."

however, adhered more closely to the traditions of the Roman jurisprudence, and maintained to a great extent the supremacy of the civil law. This was the natural result of their Arianism; but even when the Goths were converted to orthodoxy, in 589, they adhered to their ancestral principles. The council of Agde in 506, and that of Epaone in 517, while ordering the clergy not to seek the secular tribunals as plaintiffs, directs them to make no resistance when summoned as defendants, showing that an effort had been made to secure the exemption, and that it had failed.[1] Even this measure of separation from the civil jurisdiction was not easily maintained, for at the third council of Toledo, held in 589 to celebrate the abandonment of Arianism, the bishops complained bitterly of the clergy who were constantly infringing the rules of discipline by carrying their suits before the lay courts.[2] With the conversion to Catholicism came an effort to secure complete immunity from secular jurisdiction, which was asserted with so much vigor that about the middle of the seventh century Chindaswind was obliged to put a stop to it by a law which imposed a heavy fine on bishops refusing to acknowledge the jurisdiction of the ordinary tribunals, and inflicted on the lower orders of the clergy the same penalty as that incurred by the laity for such contempt of court.[3] Even this was not sufficient, and the bishops endeavored to secure, at least for themselves, some immunity from the law, for the eleventh council of Toledo, in 675, was obliged to declare that for aggravated offences they should be punished according to the secular code.[4]

Singularly enough, the ancient British church presents one of the earliest instances of the formal recognition of clerical immunity, and this nearly in the form which was preserved in

[1] Concil. Agathens. can. 32. Concil. Epaonens. can. 11.

[2] Concil. Toletan. III. can. 13.

[3] Ll. Wisigoth. Lib. II. Tit. 1 l. 18. This subjection of the clergy is the more remarkable as the bishops at that time enjoyed great power and influence.

[4] Concil. Toletan. XI. ann. 675 can. 5.

England until the Reformation. A collection of Welsh canons, attributed to the seventh century, provides that a clerk prosecuting a layman shall bring his complaint before the secular judge, but that if the clerk is the defendant the case shall be heard by the bishop, provided that the ecclesiastic has not been previously tried and convicted, in which case he must be content with secular law.[1]

The careless barbarism or the zealous fervor of the newly converted Franks took little pains to maintain the equality of the laity and the priesthood. It is easy to understand this when we consider that under the Frankish domination all laws were personal and not territorial. The Frank, the Roman, the Goth, and the Burgundian, however intermingled, had each a right to be tried by his own code, and it therefore might seem natural that the ecclesiastic should have the benefit of his canon law, which moreover could only be expounded by the courts-Christian familiar with its peculiarities. As early as 538, even before the carefully guarded grants of Justinian, the third council of Orleans was thus able to enact a canon rendering episcopal assent necessary before a clerk could appear in a secular court, either as plaintiff or defendant.[2] This virtually placed in the hands of the bishops complete control over all cases in which ecclesiastics were concerned; and the principle was more fully developed three years later at the fourth council of Orleans.[3] Possibly in this there was an undue assumption of power; certainly more was assumed than could be maintained in times so tumultuous, for subsequent legislation and canons prove that there was no definite system of procedure. The history of the period also affords ample evidence that practically there was no limit to the exercise of the royal power over ecclesiastics, as confessed by Gregory of Tours, when he reproved Chilperic I.—"If any one of us, O

[1] Canones Wallici c. 40, 41, 44, 45. (Haddan and Stubbs's Councils of Great Britain I. 133–4.)

[2] Concil. Aurelian. III. can. 32.

[3] Concil. Aurelian. IV. ann. 541 can. 20.

King, exceeds the limits of justice, you can punish him, but if you transcend the right, who shall restrain you?"[1] and not long afterwards he attributes to divine interposition a serious illness of King Gontran, who was thus prevented from executing an intention of banishing a number of his bishops.[2]

It was not only the royal authority, however, that thus infringed on the immunities claimed by the church. Sometimes powerless to enforce her own laws, she was forced to invoke secular assistance, as when in 567 the second council of Tours appealed to the lay tribunals for aid in separating from their wives monks who should commit the indiscretion of marrying.[3] The futility of the endeavor to enforce the claim of exemption is shown in an ingenious expedient, devised by the council of Auxerre in 578, by which a suit against a clerk should be brought against a brother of the defendant, or some other layman.[4] Even this attempt to save appearances was abandoned by the council of Macon in 581, which conceded, what it probably could not refuse, to secular judges criminal jurisdiction over clerical offenders.[5] The council of Paris, in 615, sought to withdraw this concession by repeating the injunctions of the councils of Orleans, requiring the assent of the bishops in all cases;[6] but the secular power was not willing thus to abandon its jurisdiction, and the edict of Clotair, which gave legal force to the canons of the council, limited with some strictness this provision, and ordered a mixed tribunal for the trial of all cases between the clergy and the laity.[7] Even this was probably a greater favor than the church could secure in practice, for the council of Chalons, in 649, complains of the civil magistrates as extending their jurisdiction over monasteries and parishes;[8] and about the same period the Bavarian laws, while exempting the episcopal order from liability to private

[1] Greg. Turon. Hist. Franc. Lib. v. cap. 19.
[2] Ibid. Lib. VIII. cap. 30.
[3] Concil. Turon. II. can. 15.
[4] Concil. Autissiodor. can. 41.
[5] Concil. Matiscon. I. can. 7.
[6] Concil. Paris. V. can. 4.
[7] Edict. Chlotar. II. ann. 615 c. 4, 5.
[8] Concil. Cabillonens. can. 11.

vengeance, treat it as in every respect amenable to the royal and popular tribunals.[1]

Whatever was doubtful in the prevailing custom, however, was eventually construed in favor of sacerdotal immunity. In 755 the acts of the synod of Verneuil, issued under the authority of Pepin le Bref, contain the important privilege more distinctly enunciated;[2] while a capitulary of Charlemagne, in 769, threatens excommunication for any secular judge who shall try and condemn an ecclesiastic without the knowledge of his bishop;[3] and another, in 789, denounces heavy penalties against any clerk who should so far disregard the rights of his order as to obey a summons to a secular court as defendant in either a civil or criminal action.[4] Another, in 794, provides a mixed tribunal for mixed cases;[5] and another, of uncertain date, prohibits the summoning of ecclesiastics before secular courts, but shows the undefined condition of the question by providing that in disputes concerning property, the lay judge shall send the claimant to the bishop to obtain justice, but that if the matter cannot be then decided it shall come before the secular magistrate.[6] A law of Pepin, King of Italy, in 793, admits the same principle by authorizing the courts to judge as laymen all clerks whom the negligence of their bishop permits to assume the secular habit.[7]

[1] Ll. Baioar, Tit. I, cap. 11 § 2. The clergy, however, were under the jurisdiction of their bishops, except for incontinence. (Tit. I. cap. 13 § 3.)

[2] Capit. Pippini ann. 755 cap. 18. About the same time a similar rule was proclaimed in England—Ecgberti Excerpt. cap. 16.

[3] Capit. Carol. Mag. ann. 769 cap. 17.

[4] Ejusd. Capit. ann. 789 cap. 37.—Cf. Capit. ann. 794 cap. 37.

[5] Ejusd. Capit. Frankfort. ann. 794 cap. 28. Such regulations were evidently of no practical importance, and are only interesting as a manifestation of the expedients resorted to with the hope of reconciling the irreconcilable.

[6] Capit. Car. Mag. c. xxv. (Martene Ampl. Coll. VII. 9). This capitulary probably refers to Italy. Cf. Capit. incerti anni cap. 17 (Baluz. I. 352).

[7] Pippini Capit. ex Ll. Longobard. cap. 17 (Baluz. II. 371).

In principle, the point was thus gained, but its practical enforcement was reserved for a later period; and we may safely assume that little respect was paid to such prerogatives by warrior-judges, who thought that the safety of ecclesiastics was amply guarded by investing them with a double or triple *wergild* for life or limb.[1] This, indeed, is not a mere matter of conjecture. We have already seen that Charlemagne and Louis le Débonnaire held the pope himself as subject to their jurisdiction, and the latter even sent a layman as commissioner for the trial of Pascal I. When, in 815, Leo III. dared to trespass on the imperial prerogative by executing some conspirators, and Louis resented this infringement of his rights, Leo, in his apology, professed the most profound obedience, admitted his subjection to the imperial jurisdiction, and eagerly requested the emperor to come or send a commissioner to sit in judgment on him.[2] In 805 a capitulary of Charlemagne orders the public judges to expedite with diligence the suits of churches, widows, and orphans,[3] showing that the secular courts were open to ecclesiastical cases, and were habitually applied to for them, which is confirmed by an allusion in Flodoard to the custom of Wulfarius, Archbishop of Rheims, and of his successor Ebbo, in conducting personally the causes of their church before the civil judges.[4] A law of 794 shows that the monarch exercised the right of sitting in ultimate appeal in criminal cases involving churchmen as freely as in those involving the laity.[5] In 803 we find him summoning to his

[1] The second council of Macon, in 585, complains bitterly that the inviolability of episcopal dignity received little respect at the hands of irreligious judges (Concil. Matiscon. II. can. 9). This is not to be wondered at when these privileges were disregarded by those who were most interested in maintaining them. The fifth council of Paris, in 615, found it necessary to forbid bishops from attacking each other in the secular courts (Concil. Paris. V. can. 11).

[2] Gratian. caus. II. q. 7 can. 41.

[3] Capit. Carol. Mag. II. ann. 805 cap. 2.

[4] Flodoard Hist. Remens. Lib. II. cap. 18, 19.

[5] Capit. Carol. Mag. ann. 794 cap. 4.

tribunal the monks of St. Martin of Tours, to be tried for contumacy in refusing to surrender a fugitive clerk condemned by Theodulf, Bishop of Orleans;[1] and an edict of 805 directs the loftiest prelates to be brought before him for judgment.[2] His power, indeed, did not require the intervention of legal forms. The Monk of St. Gall relates that, when the ambassadors from the East came to his court, they met with scant attention and hospitality from the dignitaries and bishops on their route—a fact which they ingeniously conveyed to him on their departure. Whereupon the incensed emperor degraded all the counts and abbots on the line of their journey, but let the bishops off with ruinous fines, for the want of respect which they had shown towards the imperial majesty in the persons of those deputed to him as envoys.[3] Even for certain violations of ecclesiastical discipline, Louis le Débonnaire, in 816, directed that clerical offenders should be sent to him for punishment.[4]

Under this conflicting and uncertain legislation attempts were naturally made to escape subjection to the secular tribunals, and Charlemagne, in 811, ridicules the idea that men who sometimes bore arms, and possessed private property, should refuse to answer the appeals of laymen under such a plea.[5] His disapprobation of the pretension is manifest, and how little it was regarded is evident from a law of 819, forbidding the duel when both parties to an action were ecclesiastics, but allowing it when one was a layman, and, in the former case, referring the matter to the count of the province, thus showing how complete was the jurisdiction of the secular tribunals over the clergy.[6] The practical exercise of the power

[1] Carol. Mag. Epist. ap. Baluz. I. 292.

[2] Capit. Carol. Mag. III. ann. 805 cap. 14.

[3] Monach. S. Gall. de Vit. Carol. Mag. Lib. II. cap. vii.

[4] Ludov. Pii Epist. ad Archiep. Salisburg. (Miræi Cod. Donat. Piar. cap 13).

[5] Capit. Carol. Mag. II. ann. 811 cap. 8.

[6] Capit. Ludov. Pii ann. 819 cap. 10. That the church accepted this is shown by its being included by Regino in his collection of canons—De Discip. Eccles. Lib. II. cap. 334.

thus assumed and conceded is further manifested in a supplication to Louis, about the year 820, from a priest asking for justice against another priest in a quarrel about tithes. The suitor alleges that his antagonist's friends had cudgelled him, and then made him swear on the altar that he would not appeal either to the emperor or to his *missus*. No question could well be more strictly appropriate to the action of the ecclesiastical courts, and yet there is no allusion to any canonical trial, nor did either party seem to think of recourse to any source of justice save the throne.[1] The same principle is developed in a minute account of a trial when the Abbot of Anisola was endeavoring to escape from the jurisdiction of the Bishop of Le Mans. It would seem to be a matter especially pertinent to a local synod, and yet the case was heard, in 838, by Louis le Débonnaire in general assembly; he conducted the examination and rendered judgment, which was confirmed by the assent of all present, both prelates and nobles. The details are all preserved, and prove that no immunity from secular jurisdiction was enjoyed by the church.[2]

Nor was the supremacy of the sovereign immediately destroyed by the abasement consequent upon the civil wars, nor did the throne cease to be the source of all justice. In 844 the synod of Thionville besought the assembled Carlovingian princes to employ their authority vigorously in bringing the church back to its former purity,[3] and a few months later the synod of Verneuil made a special request to Charles le Chauve that he would delegate full powers to commissioners to examine into and punish the violations of ecclesiastical discipline everywhere rampant.[4] About the same time we find Modoin, Bishop of Autun, employing the secular courts in various quarrels with the clergy of his metropolis, Lyons, and maintaining the doctrine that only bishops and abbesses were exempt from

[1] Bonifac. Epist. 107.
[2] Gest. Aldrici Cenoman. Episc. cap. 51.
[3] Capit. Carol. Calv. Tit. II. cap. 4.
[4] Ejusd. Tit. III. cap. 2.

secular jurisdiction, much to the disgust of the Lyonese, who were deprived of their leader by the degradation of St. Agobard.[1] That Modoin was correct would seem evident, for we see in the canons of St. Rodolph, Archbishop of Bourges, a passsage permitting the presence of priests in civil courts, with the assent of their bishops, when their own cases were on trial.[2]

It would be useless further to multiply evidence to prove that ecclesiastics were amenable to secular jurisdiction in both civil and criminal cases, and that the king was recognized as the fountain of justice, from whom emanated the power of punishment and of vindicating the majesty of the law, even when the wrong-doer was a churchman. How great a change was wrought in a few years we may learn from a trifling incident at the synod of Soissons in 853, where Charles le Chauve is described as entering humbly—"simpliciter cum episcopis resedebat"—and he, the King of the Franks, and the grandson of Charlemagne, laid a complaint before the assembled prelates against a petty clerk, Deacon Rainfroy of Rheims, whom he accused of forging the royal signature; and the bishops condescended to order the accused not to leave Rheims without justifying himself.[3] Unimportant as is the occurrence, it registers a victory gained by the lowest in the church over the highest in the state, and it marks the submission of the king to the doctrines of the False Decretals.

The fabricators of the forgeries, indeed, were far too shrewd not to estimate at its full value the privilege of exemption from human law. This is asserted throughout the decretals of Isidor

[1] Florus Diaconus vented his indignation at this in a long elegy, soothing in its monotonous objurgation. He describes the doctrine of Modoin—

> "Dicere nullus honos debetur (credite) sacris
> Ordinibus; cunctos pulset ubique forum.
> Nam nisi cœnobium mater muliebre gubernans
> Et sacer antistes, cætera pulvis erunt."

[2] Capit. Rodolf. Buturicens. cap. 19.

[3] Capit. Carol. Calv. Tit. XI. act. 6.

to be the imprescriptible right of the church, with a frequency which renders full citation impossible, and which reveals the earnest effort made to secure the immunity.[1] The Capitularies of Benedict afford a similar manifestation in the untiring persistence with which they enunciate and enforce the principle in all its forms.[2] Yet though it might be admitted in theory, the revolution was too great to be at once successful, and the royal power made various efforts to recover its old supremacy. In 869 Charles endeavored fruitlessly to assert for himself an appellate jurisdiction in quarrels between bishops and laymen,[3] the very terms of his edict showing how completely the jurisdiction had slipped through his hands. Occasionally, too, when feeling momentarily strong, he indulged in a violent exercise of arbitrary authority, as, when the restless Hincmar, Bishop of Laon, became involved in a dispute about a piece of land, Charles evoked the case to a secular court. Hincmar did not deny the jurisdiction, but sent an excuse in regular legal form for non-appearance on the day assigned for the first hearing, when the angry monarch committed the high-handed act of seizing all the temporalities and revenues of the see of Laon. This drew upon him a long and earnest remonstrance from the sufferer's uncle, the powerful Hincmar of Rheims, who stigmatized the royal act as utterly illegal and unexampled in the history of Christian princes.[4]

Spasmodic efforts such as this were utterly insufficient to restrain the progress of ecclesiastical independence. The church had become thoroughly persuaded that her ministers were exempt from all subjection to secular laws and judges,

[1] E. g. Pseudo-Clement. Epist. 1; Pseudo-Fabian. Epist. 2; Pseudo-Gaii Epist. 1 cap. 2; Pseudo-Marcellin. Epist. 2 cap. 3; etc.

[2] Capitul. Lib. v. cap. 70, 192, 378; Lib. vi. cap. 111, 164, 434; Lib. vii. cap. 139, 210, 438, 469, etc.

[3] Capit. Carol. Calv. Tit. xl. cap. 7.

[4] "Quod nec in legibus nec in libris ecclesiasticis quemquam Christianorum principum fecisse legimus." Hincmar. pro Eccles. Libert. Defens. Expos. 1. The Bishop of Laon was finally reinstated, and subsequently proved a thorn in his uncle's side.

and she maintained this claim with her customary perseverance —in fact, as it had been asserted to be of divine right handed down from apostolic times, it was a claim which could not be abandoned. In 866, Nicholas I., when replying to the inquiries of the King of Bulgaria, told him that neither he nor any other layman had a right to investigate the conduct of ecclesiastics or to judge them, for all such matters were reserved exclusively to the bishops, the sacerdotal character being too sacred for discussion by those whose only function was to revere and to obey.[1] In the same spirit the synod of Ravenna, in 877, forbids clerks and nuns, and orphans and widows under the guardianship of bishops, from being brought before secular courts, and threatens with the dread anathema any potentate who may dare to infringe the rule.[2] Germany was not behindhand in proclaiming the same principle, for in 895 the council of Tribur established the bishops as the sole judges in all cases to which ecclesiastics were parties, whether as plaintiffs or defendants.[3]

The persistence of the church, backed up by the unfailing resource of excommunication, finally triumphed, and the sacred immunity of the priesthood was acknowledged, sooner or later, in the laws of every nation of Europe.[4] This of course was a

[1] Nicolai PP. I. Epist. 97 § 70.

[2] Synod. Ravennat. ann. 877 can. 4. (Harduin. T. VI. P. I. p. 186.)

[3] Concil. Tribur. ann. 895 can. 21.

[4] Bracton. Lib. III. Tract. ii. cap. 9.—Laws of Howell Dda, Dimetian Code Bk. II. chap. viii. §§ 124, 130 (Owen's Ancient Laws, etc., of Wales I. 475–9).—Beaumanoir, chap. XI. § 40.—Las Siete Partidas, Pt. I. Tit. VI. l. 61.—Constit. Sicular. Lib. I. Tit. 42.—Assises de Jerusalem, Baisse Court, cap. 14, 367.—Feudor. Lib. V. Tit. XVII. § 4.—Specul. Suevic. cap. 77.—Legg. S. Stephan. Hungaror. R. cap. 3.—Raguald. Ingemund. Legg. Suecor. Lib. I. cap. 20.—Constit. Christof. II. Daniæ ann. 1320 §§ 2, 11.—Legg. Opstalbom. § 24. It is true that in the fourteenth century, during the quarrel between the Emperor Louis IV. and the papacy, while the church was rent by the schism of the Fraticelli, the bold imperialist Marsiglio of Padua did not hesitate to argue not only that ecclesiastics should be subjected to the civil jurisdiction, but that

source of injury to the community and of corruption to the church, for the clerks, in emancipating themselves from human law, did not obtain exemption from human infirmities, and in the ecclesiastical courts not only were the facilities of escape through the system of canonical compurgation vastly greater than in the secular tribunals, but the theory which regarded degradation from the priesthood as one of the heaviest penalties that could be inflicted, and the rule which forbade the spiritual judges from pronouncing sentences of death or mutilation, rendered their jurisdiction virtually an asylum for offenders when compared with the atrociously cruel criminal jurisprudence of the time. In addition to this, there was the *esprit de corps* which tended to incline the episcopal officials to seek the acquittal rather than the conviction of those of the cloth, and it is therefore not surprising that the laity came to regard the clergy as entitled to a lenity which amounted almost to impunity for crime.

Thus, as early as 1085, a constitution of the Emperor Henry IV., enforcing the Truce of God under penalties of frightful severity, draws a broad line of distinction between the church and the people. At that time Henry was emancipated from the

they should be punished more sharply than laymen (Marsilii Patav. Defens. Pacis P. II. cap. viii.).

The Scots appear to have been somewhat chary of granting the privilege, for though it is expressed in the ancient canons which pass under the name of the Ecclesiastical Laws of Macbeth (Spelman. Concil. I. 571), yet the statutes of a Parliament held in the year 1400 (Stat. Robert. III. cap. 5, ap. Skene.) would seem to show that at that period the secular tribunals had cognizance of ecclesiastical causes.

The early Icelandic church likewise was in this respect exceptional. The primitive code of ecclesiastical law in force there from 1122 to 1275 provides no exemption for the clergy. Even for ecclesiastical offences they were tried in the ordinary manner by a jury of the vicinage, and were punishable with the secular penalties of fines, etc. (Kristinrettr Thorlaks oc Kettils, cap. II. XIII. XV. Ed. Thorkelin, Havniæ, 1776.) The only allusions in the code to any ecclesiastical jurisdiction are that a priest disobeying his bishop is to be tried by a synod of neighboring priests; and that questions arising with respect to tithes due to a bishop are to be decided by the bishop himself (Ibid. chap. XV. XXXIX.).

papacy, and was the political head of a successful schism, so that he was in a position to legislate for all classes of his subjects. The manner in which he favored the clergy therefore shows how profound an impression had already been produced in the popular mind as to the superior privileges of the church. A crime so unclerical as the violation of the temporary truces which were placed under the special sanction of God, would rather seem to claim additional punishment for malefactors whose peaceful profession ought to render it peculiarly odious, particularly when we reflect that simple degradation would prove but a trifling penalty for offenders who were so lost to all sense of veneration for their sacred functions as to come within the provisions of the edict. Yet deeds for which laymen were to be decapitated brought only degradation to clerks; while for lighter infractions of the law mutilation was inflicted upon laymen, and clerks were only to be suspended from their functions and subjected to the canonical penance of fasting and the discipline.[1] In England, in the thirteenth century, the only punishment provided for clerks was degradation, irrespective of the number and magnitude of their crimes;[2] and in the Norman legislation of the same period the ecclesiastical courts visited only with degradation and exile the offences which in laymen were punished with mutilation and death[3]—a provision retained throughout the revisions of the Coutumier until 1580.[4] So in Wales a first offence is described as only entailing degradation to laymanship, though it is true that one collection of Welsh laws adds confiscation of property.[5]

[1] Henric. IV. Const. iv. (Migne's Patrol. T. 151 p. 1134).

[2] Bracton Lib. iii. Tract. ii. cap. 9 § 2.

[3] Cod. Leg. Norman. P. ii. cap. 16. (Ludewig Reliq. Mssctor. VII. 297.)

[4] Anc. Cout. de Normandie chap. 83 (Bourdot de Richebourg, IV. 33). See also Établissement de Philippe le Bel ann. 1302 (Isambert, Anc. Lois Franç. II. 748). In 1540, however, Francis I. forbade the Norman ecclesiastical judges to try criminal cases without previous notice to a royal official appointed to be present and to guard the rights of the sovereign. (Isambert, XII. 714.)

[5] Owen's Anc. Laws, etc., of Wales II. 341, 669.

These instances will suffice to show the general tenor of the principle established in mediæval legislation. So serious an interference, however, with the administration of criminal justice could not but be the cause of perpetual strife between church and state; and a rapid sketch of its vicissitudes in some of the leading nations of Christendom may not be uninteresting.

In England the prerogative was not secured without a struggle, though it was fully recognized in the Anglo-Saxon legislation.[1] Henry II. was too astute a ruler not to perceive the immense evils arising from it, and the limitation which it imposed upon the royal power by emancipating so large a class of his subjects from obedience to the laws of the realm. When in 1164 he endeavored, in the Constitutions of Clarendon, to set bounds to the privileges of the church, he therefore especially attacked the benefit of clergy, and declared that ecclesiastics were amenable to the royal jurisdiction.[2] Thomas à Becket, however, speedily vindicated the imperilled prerogatives of the church by excommunicating the sacrilegious men who dared thus to invade her rights, and the disastrous result of the quarrel between the king and the archbishop rendered it necessary to abandon all such schemes of reform. Yet even the humiliation of John, and the supremacy gained by the papacy, did not cause this perversion of justice to be implicitly respected, and, a century later, although the principle was unreservedly admitted by Bracton, in practice the courts were perpetually violating it. Thus in 1261 the council of Lambeth complained that ecclesiastics, when accused, were frequently seized and imprisoned by the secular officials; while, if they refused to obey a summons, the royal judges outlawed them without ceremony for contumacy. To punish these infractions of the canon law, the council proceeded to excommunicate all concerned in such cases, and to place under interdict their residences and the localities where clerks were imprisoned, until

[1] Laws of Cnut, Eccles. cap. 4; Secular. cap. 41, 43.

[2] Constit. Clarendon. cap. 3, 16.

the sufferers should be released.[1] This action does not appear to have accomplished its purpose, for in 1275 Edward I. interposed, and ordered the delivery to the ecclesiastical courts of all clerks indicted of felony, adding that the episcopal judges ought not to discharge them without due purgation, and intimating that if they neglected to do their duty, he might feel obliged to interfere.[2] This threat shows that Edward was not disposed to admit that he had no control in the matter; but it was an empty boast. A legal writer of the time of Edward II. lays down the rule that the judge must remand to the episcopal court a clerk accused of a capital crime, after he shall have proved his clergy (even if he had made a confession, under 9 Edw. II. c. 15, 16), and instructs the prosecutor to pursue his action before the spiritual tribunal, quietly adding: "Et le clerke, apres due purgation, recit toutes ses biens mouvables et fiefs sans difficulty."[3] In 1350 the prelates complained that their privileges had been disregarded by the drawing and quartering of several clerks convicted of treason in the secular courts, and a statute of Edward III. consequently promised that the rights of the church should be duly respected in future, while the archbishop of Canterbury pledged himself that all offenders delivered to the ordinaries should undergo due punishment.[4]

The immunity thus afforded to offenders bore its natural results in fostering crime, and in 1402 there was a disposition shown in Parliament to curtail the benefit of clergy in the interest of justice, since the tenderness or connivance of the ecclesiastical officials allowed offenders, as a general rule, to escape. The church, thus threatened, promised better behavior for the future, pledged itself that criminals should not be allowed to go unpunished, and obtained a continuance of the

[1] Concil. Lambethens. ann. 1261 (Harduin. VII. 539).

[2] 3 Edward I. cap. 2.

[3] Horne's Myrror of Justice, cap. III. sect. 4.

[4] Statutes at Large I. 256.

privilege, which continued to be abused as before.[1] That the laity were illiterate and the clergy educated was taken for granted, and by the middle of the fourteenth century the test of churchmanship came to be the ability to read, so that as time passed on the benefit of clergy gradually extended itself, and the privilege became in fact a free pardon on a first offence for all who knew their letters, a test which speedily led to the ingenious device of gaolers teaching their prisoners to read as a preparation for their trial.[2] So liberally, indeed, was the rule expounded, that aliens were provided with books in their own tongues out of which to prove their clergy, and blind men escaped the halter by being able to speak Latin "congruously." Henry VII. recognized the difference between these putative clerks and men who really were in orders when he sought to check the prevalence of crime attributable to this anomalous privilege. By a law of 1487 he directs that lettered persons not in orders shall enjoy the benefit of clergy but once, and that after conviction, before release, murderers shall be branded on the thumb with the letter M, and other felons with the letter T, so that on a second conviction they may be known and treated as laymen. Men in orders, however, were not exposed to this, and were only required on a subsequent trial to produce their letters of ordination, on the strength of which they again escaped.[3] It is true that in such cases the episcopal officials were bound to degrade these unworthy members of the church, but practically this was rarely done, and the offender generally was enabled to continue without limit his evil courses. The ceremony of degradation required for its due execution a certain number of bishops, and had to be performed at the place where the crime had been committed. Owing to the difficulty of assembling the requisite number of prelates, the offenders in most instances escaped the penalty of degradation, and were discharged unpunished and still clothed with the

[1] 4 Henr. IV. cap. 3. [2] Pike, History of Crime in England I. 301, 483.
[3] 4 Henr. VII. cap. 13.

mysterious attributes which shielded them from human justice. That the church should continue to protect indefinitely the lawless careers of men who disgraced their order grew at length to be a scandal past endurance when the Reformation came to open the eyes and loosen the tongues of scoffers; and when Cardinal Wolsey undertook to reform the worst abuses of the Anglican establishment, he sought to check this source of evil by obtaining from Clement VII. a bull which authorized a single bishop, with two abbots or other dignitaries, to perform the ceremonial requisite to degradation.[1]

Henry VIII. followed this up with various laws imposing restrictions on the privilege in atrocious crimes. Before his rupture with Rome he thus excepted from the benefit of clergy those who were not actually in orders, and who were convicted of various felonies; including treason, murder, burglary, highway robbery, etc., and, after he had assumed the supremacy of his church, he extended the same rules to include those who were actually ordained.[2] In his violent efforts to substitute his supremacy for that of the pope, he executed priests and monks as freely as laymen, and spared them none of the fearful incidents of the punishment for high treason. The disaffected clergy of the North, in the convocation of 1536, ventured a remonstrance, saying that no clerk ought to be put to death, without degradation by the laws of the church.[3] This disaffection speedily ripened into the rebellion known as the "Pilgrimage of Grace," and its repression left the king master of the situation. His laws, however, were repealed by indirection under Queen Mary.[4] Edward VI. extended the benefit of clergy to married men;[5] and during his reign, and that of Elizabeth, various acts were passed excepting certain crimes from this privilege, thus producing great confusion in criminal

[1] Rymer, Fœdera, XIV. 239.

[2] 23 Henr. VIII. cap. 1.—25 H. VIII. cap. 3.—28 H. VIII. cap. 1.—32 H. VIII. cap. 3.

[3] Strype's Eccles. Memorials, Vol. I. Append. No. LXXIV.

[4] 1 Mary Sess. 1 cap. 1 § 5.

[5] 1 Edw. VI. c. 12 § 16.

jurisprudence. Moreover, under Elizabeth, the rule was adopted that, in all cases where clergy was allowed, the convict should be branded as required by the law of Henry VII., and should be deprived of clergy on trial for a subsequent offence. The farce of delivering the released convict to the ordinary, or episcopal official, was disused, and he was imprisoned at the discretion of the judge for a period not exceeding a year.[1] In the "Description of Britaine," which serves as an introduction to Holinshed's Chronicles, the existing custom under Elizabeth is tersely described. "Theeves that are saued by their bookes and cleargie are burned in the left hande, vppon the brawne of the thombe with an hote Iron, so that, yf they be apprehended agayne, that marke bewrayeth them to have beene arrayned of fellonie before, whereby they are sure that time to have no mercy. I do not read that this custome of sauing by the booke is used anywhere else then in Englande, neyther doe I finde, after much diligent inquiry, what Saxon Prince ordayned that lawe. Howbeit, this I generally gather thereof, that it was devised at the first to traine the inhabiters of this lande to the loue of learning, which before contempned letters and all good knowledge."[2] Shortly after this period, much legislation ensued from time to time affecting the limitation of the privilege in various offences; and when it had thus lost all special reference to the church the ingenuity of lawyers was taxed to the utmost, in distinguishing between the shades of crime entitled to the privilege and those for which the convict was ousted of his plea, rendering this, according to Sir Matthew Hale, "one of the most involved and troublesome titles of the law."[3] Early in the reign of Anne the benefit of clergy was extended to all malefactors, by abrogating the reading test, thus placing the unlettered felon on a par with his better educated fellows, and it was not until the present century was well

[1] 18 Eliz. cap. 7.

[2] Book III. cap. 6 p. 108 (Ed. of 1577).

[3] Placit. Coronæ, chap. XLIV–LIV.

advanced that this remnant of mediæval ecclesiastical prerogative was abolished by 7 and 8 Geo. IV. c. 28.[1]

In Germany, before the imperial power was broken in the contest with the papacy, there was a decided disposition to resuscitate the temporal supremacy enjoyed by Charlemagne and lost by his descendants. We have seen Henry IV., towards the close of his strife with Rome, legislating for the clergy of his dominions; while his grandfather, Conrad the Salic, had the audacity, in 1037, to depose and banish, without form of trial, the bishops of Vercelli, Cremona, and Piacenza; and though the chronicler appears somewhat scandalized at this summary proceeding, it is rather at its want of formality than at its invasion of ecclesiastical privilege.[2] All such pretensions vanished, however, when the triumph of the popes in the long contest rendered the clerical power supreme; and in 1220 Frederic II. decreed that no one should dare to drag a clerk before the secular tribunals, either in civil or criminal actions, under pain of forfeiture of his claim, while judgments rendered under such circumstances were declared null and void, and the presiding judge was punished by deprivation of his judicial functions.[3] Yet the Schwabenspiegel which not long afterwards embodied the jurisprudence of Southern Germany, in regulating civil cases between clerks and laymen, while empowering the clerk to summon an adversary before the secular court, diminished somewhat the exemption which he enjoyed of refusing to appear as a defendant, by excepting cases of debt from its operation.[4]

The long struggle between Louis of Bavaria and the popes

[1] Massachusetts, however, has the credit of abrogating it, almost immediately after the Revolution, in 1784 (Quincy's Mass. Reps. p. 53 *n*) possibly in consequence of the escape, in this manner, of the soldiers implicated in the "Boston massacre," from the penalty of manslaughter, of which they had been found guilty.

[2] Wippo de Vit. Chunrad. ann. 1037.

[3] Constit. Frideric. II. § 7 (Post Lib. Feudor.).

[4] Jur. Provin. Alaman. cap. 77.

for a time shook the foundation of ecclesiastical prerogative, but when Louis passed away, his successor Charles IV., the creature of the papacy, was eager to preserve the favor of his patrons by maintaining the threatened prerogatives. When, in 1377, the German clergy complained of the aggressions of the secular tribunals, he promptly issued a constitution which punished the imprisonment of a clerk with outlawry and forfeiture of all possessions, in addition to the penalties provided by the civil and canon law;[1] and this edict was resuscitated and confirmed by Boniface IX. in 1391, by Martin V. in 1418, and by the Councils of Constance and Bâle in 1415 and 1434.[2] So completely was the church thus emancipated from all subjection to the secular power that in 1491 we find a synod of Bamberg threatening with excommunication and deprivation of the fruits of his benefice any ecclesiastic who should obey in any way a summons from the secular courts in either civil or criminal cases.[3]

There was one tribunal in Germany, however, which dared to assert and maintain its jurisdiction over churchmen—that of the terrible Free Judges of Westphalia, whose wide-spreading power, based upon the terrorism of secrecy, enabled them to claim and exercise the right. That it was generally submitted to is shown by the exemptions occasionally granted by the Vehmgericht as a special favor to particular churches;[4] but it was sometimes resisted, for when the Holy Vehme, in 1418, at the complaint of two knights, summoned the Primate of Germany, Theodoric, Archbishop of Mainz, that powerful prince appealed for protection to the papal legate at the imperial court, and the Cardinal of San Angelo accordingly lost

[1] Caroli IV. Constit. de Immunit. Cleric. ann. 1377 § 5 (Goldast. II. 93). Goldast erroneously attributes the date of 1359 to this.

[2] Mag. Bull. Roman. I. 296.—Dalham Concil. Salisburgens. p. 267.—Von der Hardt T. IV. pp. 524–8.—Harduin. VIII. 1483–88.

[3] Synod. Bamberg. ann. 1491 Tit. xiii. (Ludewig Script. Rer. German. I. 1206).

[4] Seneckenberg de Judic. Westphal. cap. xix. § 7.

no time in denouncing the heaviest spiritual penalties against those who dared to disregard the imprescriptible rights which protected every ecclesiastic from the jurisdiction of the laity.[1] Yet the audacity of the attempt shows the height to which the power of the Free Judges had risen.

We have seen Frederic II. granting all that the church could ask in the Empire which it virtually controlled, but in his hereditary dominions of Naples and Sicily he was not quite so obedient. The traditions of independence handed down from the Norman kings were by no means extinct, and he preserved and extended the old laws which held ecclesiastics liable in the secular courts on charges of high treason and other serious crimes against the sovereign; which retained to the feudal superior the cognizance of cases involving property inherited by clerks and not belonging to the church, and those which punished contempt of the royal court, whether committed by laymen or churchmen.[2]

The same disposition to limit clerical privilege existed at the other extremity of Italy. The municipal code of Verona in 1128 shows that no immunity was allowed to ecclesiastics. The only favor conceded to them was that the bishop was exempted from the necessity of personally taking judicial oaths, being allowed to put forward an attorney for this purpose; but even this was specifically refused to priests and the lower orders; and in cases between laymen and clerks an appeal lay from the ecclesiastical to the municipal tribunals.[3] In 1347, a citizen complained to Lucchino Visconti, Signor of Milan, that a clerical adversary, while alleging the secular law in his favor, refused to be bound by those statutes which were

[1] Gudeni Cod. Diplom. IV. 306.

[2] Constit. Sicular. Lib. I. Tit. 42, 65, 66, 72.

[3] Lib. Juris civilis Veronæ cap. xiii. xx. (Veronæ 1728, pp. 15, 19). So jealous was the limitation of ecclesiastical jurisdiction that even suits for tithes had to be brought before the lay tribunals.—Ibid. cap. lxxiv. (p. 60).

adverse to him, whereupon Lucchino proclaimed that the laws of the state were binding on priest and layman alike.[1] His son Bernabo inherited his contempt for the claims of the clergy, and exercised his cruelty upon them without restraint. In 1369 he seized the provost of the Augustinian convent of St. Barnabas of Milan, tortured him to death upon the rack, dragged the body through the streets, and hung it on the public gallows. Another ecclesiastic of high rank, Simone di Castiglione, after being racked, was crowned in derision with a paper mitre, dragged through the streets at a horse's heels, and then burnt to death at the stake. He ejected Agnes, abbess of the principal convent of the Milanese Benedictines, and replaced her with Andriola, a girl of twenty, the natural daughter of his brother Matthew; and he kept in prison for many years Bernardino, Bishop of Parma.[2] In the perennial quarrels between the popes and the Lombards, Gregory XI. succeeded in forming a powerful league against Bernabo, to which he contributed by personally sending a contingent from Avignon. Bernabo was defeated, sued for peace, and promised to amend his ways, and Gregory, under the pressure of his allies, was reluctantly obliged to admit the sinner to reconciliation. The independent spirit of the Lombards, however, was not subdued, and it was probably to conquer it that Urban VI. in 1383 issued a bull, which inflicted on all potentates and communities, daring to exercise secular jurisdiction over ecclesiastics, excommunication and interdict, removable only by the Holy See.[3] The Lombards were stubborn, however, for in 1388 we find Bernabo's nephew, Gian Galeazzo Visconti, decreeing that all cases should be decided in the court to which the defendant belonged, thus depriving ecclesiastical plaintiffs of the benefit of their own jurisprudence.[4] This gave some sort of equality between the classes, as regarded civil cases,

[1] Antiqua Ducum Mediol. Decreta p. 3 (Mediolani 1654).

[2] See the Brief of Gregory XI. in Raynald. Annal. ann. 1373, No. 10.

[3] Bull. Quia Sicut (Mag. Bull. Roman. I. 292).

[4] Antiqua Ducum Mediol. Decret. pp. 136–7.

while preserving to the church its prerogative in criminal matters. In accordance with the canon law, the Archbishop of Milan, in 1352, issued a pastoral reminding his clergy that the spiritual courts were not to protect them when detected in crime, unless they wore the clerical habit and abstained from secular callings, but he added that these questions were not to be decided by the secular judges under pain of excommunication.[1] This, as might be anticipated, did not diminish the evil, and in 1381 we find Gian Galeazzo complaining of the numerous crimes of those who wore the tonsure without having taken orders, and were constantly claimed of the temporal courts by the Archbishop. With his ancestral spirit strengthened by power and prosperity, he orders his judges to disregard such reclamations and to enforce the laws against all who were not actually in holy orders.[2] Again, in 1419, the same trouble rises into view, and Philippo Maria Visconti was obliged to order that simple tonsured clerks, not wearing the habit, should be held and reputed as laymen, subject to secular jurisdiction.[3] Yet when Milan lost her independence, under Spanish rule, she was reduced to implicit obedience, for, in 1615, one of her jurisconsults declares that a clerk wearing secular garments does not forfeit his benefit of clergy in case of crime until after he has had three warnings.[4]

Spain was perhaps the latest country in Europe to succumb to the centralizing sacerdotalism of Rome, and its long-preserved independence was reflected in its legislation on the subject of clerical immunity. We have already seen that in the seventh century the Gothic laws of Chindaswind subjected both prelates and clergy to the jurisdiction of the secular courts. In the *Fuero Juzgo*, or Romance version of the Wisigothic code, in force until the thirteenth century, the bishops

[1] Antiqua Ducum Mediol. Decret. pp. 5-6.
[2] Ibid. p. 52.
[3] Ibid. p. 246.
[4] Carpani Leges Ducat. Mediolan. P. I. cap. 44, No. 25 (Mediolan. 1616).

appear to have emancipated themselves from this liability, but the provision remains as to the other orders of the clergy, who are required to obey the summons of the civil judges, under the ordinary penalties for contempt of court.[1] Yet it is questionable whether, towards the end of this period, the church had not secured the immunity of its ministers in ordinary cases, for a Spanish council of the thirteenth century orders that an ecclesiastic taken in the act of committing forgery, robbery, coining, homicide, rape, or other capital crime, shall be publicly degraded by his bishop;[2] and about the same period Alphonso the Wise, in the Siete Partidas, describes the existing law to be that for such crimes the clerk is to be tried by the spiritual court, with the penalty of degradation if convicted, when for a subsequent offence he is liable to secular law.[3] Those, however, who fall into heresy, or propagate heretical opinions, or remain under excommunication for a year, or disobey their bishops, or forge papal signatures or seals, come at once under secular jurisdiction; and forging royal letters is punishable with degradation and branding.[4] In civil suits, moreover, the episcopal courts have cognizance only when both parties are ecclesiastics—actions between clerks and laymen coming before the lay judges;[5] and this provision, so adverse to sacerdotal claims, was preserved in the Recopilacion. Nearly a century later, in 1335, the Portuguese bishop, Alvarez Pelayo, distinctly asserts that no ecclesiastic, however mean, can be subjected to the secular power in any case.[6] He admits that of old this right had not been enjoyed, even as in his own time tyrants sometimes infringed on the rights of the church, but that the popes had won the privilege from the emperors;[7]

[1] Fuero Juzgo, Lib. II. Tit. I. ley 17.

[2] Martene et Durand. Thesaur. IV. 171.

[3] Las Siete Partidas P. I. Tit. vi. ley 61.

[4] Ibid. leyes 59, 60.

[5] Ibid. ley 57.

[6] Alvari Pelagii de Planctu Eccles. Lib. I. art. 37 No. 5 (Lugduni 1517).

[7] Ejusd. Lib. I. art. 44 § F.

and having thus conceded that the prerogative was not of divine law, he proceeds to establish it by scholastic dialectics, proving that the emperor holds his empire as a fief in vassalage of the church, and that since no vassal can judge his suzerain so he cannot judge the church, whence the conclusion is plain that no inferior potentate can have any jurisdiction over ecclesiastics, especially as the laity are inferior to the clergy.[1]

In France the question of clerical immunity was the source of endless debate. As early as 1096 we find Urban II. at the council of Nemours forbidding the secular authorities to summon clerks and monks before their courts, and denouncing such actions as equivalent to rapine and sacrilege.[2] This pretension at length was submitted to, but the lay justiciars argued that ecclesiastical jurisdiction should not confer immunity. Thus in 1204 the crown and the nobles endeavored to establish the principle that a clerk convicted of a capital offence in the spiritual court was to be degraded and abandoned to the temporal power for the punishment due to his crime,[3] but the attempt was of no avail. In Normandy under the English rule clerical privileges were more restricted than elsewhere, for in 1205 it is stated that while a clerk arrested must be delivered to the church if it claims him, still, if he is convicted of theft or homicide, he must be degraded and banished; if he returns without royal permission, he is to be punished by the secular courts; and on a second offence he is liable to trial as a layman.[4]

In 1259, St. Louis procured from Alexander IV. a special rescript forbidding the excommunication of royal officials arresting any clerk guilty of an enormous crime, if it were necessary to do so in order to prevent the flight of the offender; but the prisoner was to be at once handed over to the eccle-

[1] De Planctu Eccles. Lib. I. art. 67 § J.

[2] Decret. Urbani PP. II. cap. xvi. (D'Achery Spicileg. I. 629).

[3] Établissement de 1264, §§ 2, 6 (Isambert, Anc. Lois Franç. I. 197).

[4] Inquisitio de Juribus Regis (Martene Collect. Ampliss. I. 1061).

siastical courts, and no jurisdiction was to be exercised over him in the secular tribunals; and the same pontiff, moreover, ordered the French prelates not to interfere with the royal jurisdiction over married and bigamous clerks, who were not to enjoy immunity.[1] At the same time clerical privileges were strictly maintained, for towards the close of the century we find Beaumanoir warning the secular judge that any disregard of the benefit of clergy involved an excommunication removable only by the pope himself; yet, in theory at least, the immunity of the clergy was not complete, for the ecclesiastical courts were directed to inflict on their convicts not only degradation but imprisonment for life[2]—a provision, as we shall see hereafter, but rarely carried into effect.

The revival of the study of the Roman law was creating a race of jurists who were not disposed to regard the church with reverence or to submit to the interference which her pretensions were constantly provoking. Every effort, therefore, was made to take full advantage of the distinction admitted by canonists between ecclesiastics in orders devoted to the ministry of the altar and the hordes of those who sought the lower grades without abandoning their worldly pursuits. St. Louis thus declared that clerks who did not wear the tonsure were subject to secular jurisdiction, while their tonsured brethren were exempt, and so complete was this immunity that even confession before a lay judge was of no legal value as not being lawfully made.[3] He also obtained from Alexander IV. in 1259 an order putting an end to the abuse whereby ecclesiastics engaged in business refused to be bound by the laws of the land in matters relating to their trade.[4] Philippe le Bel, in 1291, was obliged to admit that even letters under the royal seal could not compel an ecclesiastic to appear in a secular court to answer personal charges;[5] but in 1300 he ventured to

[1] D'Achery Spicileg. III. 634. The latter of these regulations was proclaimed as in force by Philippe le Hardi in 1274 (Isambert, II. 655).

[2] Cout. du Beauvoisis, cap. XI. §§ 44, 45.

[3] Établissements, Liv. I. chap. 84.

[4] D'Achery, loc. cit.

[5] Isambert, op. cit. II. p. 686

trespass on clerical privileges by an edict declaring that acquittal in the courts-Christian should not protect the possessions of a clerk from confiscation by the royal tribunal when his crime was notorious.[1] Louis Hutin, in the disturbances which threatened the opening of his reign, endeavored to propitiate the clergy, in 1315, by enacting and confirming the constitution of 1220 of Frederic II., which guaranteed complete immunity to ecclesiastics;[2] but the tendency of the age was opposed to such reaction, and the contest between the crown and the church became constantly more bitter. The power of the feudal lords was rapidly declining, and the royal jurisdiction was everywhere usurping that of the seignorial courts. In place of dealing with the spasmodic violence of the petty seigneurs, destitute of cohesion or unity, the church found herself confronted with a system of royal courts, all animated with an aggressive spirit, co-operating with each other to produce not anarchy but civilization, and under the general guidance of the able lawyers who composed the royal Parlement. These men knew what they fought for, and were rarely mistaken in the means adopted; nor was a class from which sprang Guillaume de Nogaret, the audacious captor of Boniface VIII., likely to be troubled with scruples concerning the sanctity of privileges which in the study of the Pandects and the Code were seen to be without foundation.

The systematic abuses of clerical privilege were, in fact, becoming unbearable. They grievously oppressed the laity, they greatly interfered with the administration of criminal justice, and they threatened to bring the church itself rapidly into disrepute. Perplexing questions constantly arose, and rogues eagerly availed themselves of the conflict between the secular and ecclesiastical courts to escape altogether the penalty of their crimes. Beaumanoir tells us that murderers and robbers administered the tonsure to each other and assumed the clerical habit in order to evade the secular jurisdiction,

[1] Isambert, II. p. 725. [2] Ibid. III. 123.

and in all such cases the question of clericature had to be decided by the clerical courts,[1] giving to the criminal an immense advantage—one long appreciated, as we shall presently see, for, a century later, tricks such as these were still habitually used to defeat the justice of the Châtelet of Paris. It was not that the ecclesiastical tribunals were more tender of human blood, for when they were exercising their seignorial jurisdiction over laymen they inflicted the death-penalty with all its terrible aggravations as mercilessly as the lay courts;[2] it was that the ecclesiastic himself was to be more tenderly treated and to enjoy a special privilege of comparative immunity for wrong-doing.

Some reform was necessary, but the church applied it with a sparing hand, so as not to abandon the immunity which alone rendered these abuses possible, while endeavoring to evade the odium of the criminals who everywhere claimed and enjoyed her protection. For the purpose of obtaining this substantial benefit, crowds of worthless wretches entered the church and took the lower grades, which at that time did not entail separation from their wives or abandonment of worldly pursuits, and she was rendered responsible for their misdeeds, and was called upon to protect them. To meet this flagrant abuse, Innocent III., as early as 1212, had decreed that a married acolyte could not be compelled to wear the tonsure and was not entitled to benefit of clergy.[3] In 1298, Boniface VIII. also endeavored to adjudicate on the vexed questions which constantly arose by declaring that no lay court was competent to try any one who was commonly reputed to be a clerk; that even when there was a reasonable doubt of laymanship, and the criminal had always conducted himself as a layman, and had only recently assumed the tonsure and sacerdotal dress, then all proceedings against him should cease until the spirit-

[1] Coutumes du Beauvoisis, ch. xi. § 45.

[2] See the Registre Criminel de St. Martin-les-Champs, Paris, 1877, *passim*.

[3] Can. 7 Extra Lib. III. Tit. iii.

ual court could investigate the case and decide as to which jurisdiction could claim him.[1]

These concessions, if they can be so called, amounted in reality to nothing. They pretended to touch a few of the more palpable scandals, but left unreformed the intolerable abuses which the increasing enlightenment of the age was not inclined to brook. In 1328, Philip of Valois complained with exceeding bitterness that murderers and malefactors of all kinds were released from the secular courts on merely asserting their clergy, and he did not hesitate to accuse the bishops of admitting to the tonsure married men of full age, who applied for it merely to escape the punishment due to their crimes.[2] Not long afterwards, Raymond, Bishop of Nismes, found himself obliged to condemn the prevalent practice of ecclesiastics buying up doubtful claims, and then wearying out their adversaries with the endless proceedings of the courts-Christian, to which they were entitled to carry their cases.[3] In 1344 the council of Noyon pronounced an *ipso facto* excommunication against the graceless laymen who pretended to be clerks, and who gave themselves the tonsure[4]—an empty fulmination, for the classes which adopted the expedient were for the most part far beyond the reach or influence of spiritual censures. About the middle of the century, Ernest, Archbishop of Prague, issued a general order instructing parish priests to lay under interdict on their own authority any place where a violation of clerical immunity might occur; but in 1361 he was obliged to withdraw this regulation in consequence of the advantage taken of it to afflict the faithful in protecting those who either had never belonged to the church or who through misconduct had forfeited their rights; and he ordered all such questions to be referred to the bishops for settlement. He further describes the crowds of men who were laymen in

[1] Can. 12 in Sexto Lib. v. Tit. xi.

[2] Bib. Mag. Patrum T. XIV. pp. 79–80 (Ed. Colon. 1618).

[3] Statut. Eccles. Nemaus. Tit. xv. cap. 14 (Martene Thesaur.).

[4] Concil. Noviomens. ann. 1344 can. 14 (Harduin. VII. 1674).

everything except the right to appeal to the church for protection when overtaken by the consequences of their crimes, disgracing the establishment, and giving rise to intricate and ceaseless quarrels between the two jurisdictions. The only remedy which he could suggest was that of rejecting the claims of all who could not show the tonsure and clerical habit[1]—a palliation of the evil not likely to be very effective. It proved, indeed, as vain as might have been expected, for a few years later, in 1365, the next archbishop, John, is seen ordering his archdeacons to employ excommunication and even imprisonment to repress the untonsured and secular habited clerks in their customary pursuits of concubinage, drunkenness, gambling, thieving, robbery, and bearing of prohibited weapons.[2] It is no wonder, indeed, that the knaves preferred the ecclesiastical courts, for the crime of theft, which in a layman was punished with the halter, in a clerk was only visited with a fine of five deniers.[3] In fact, the councils of the period present an abundant store of canons directed against the multitudes of vagabonds who were amenable to no discipline, and who made no pretence of abandoning their secular lives, while they confidently claimed protection of the body which they disgraced. The church could find no cure for the evil, however, without abandoning some of her most cherished prerogatives, and she preferred to endure the scandal rather than to suffer the loss. So far, indeed, did she carry her pretensions that in the fourteenth century we find the Bishop of Paris endowed with jurisdiction over all painters, imagers, embroiderers, embroideresses, and enamellers, because, apparently, those trades were mostly concerned with ecclesiastical decoration, and his claims were vigorously enforced, though sometimes successfully contested by other ecclesiastical jurisdictions.[4]

[1] Statuta Arnesti Archiep. Pragens. ap. Höfler, Concil. Pragens. p. 7–8 (Prag, 1862).

[2] Statuta Synodalia ann. 1365 (Ibid. p. 9).

[3] Statuta Synod. Prag. ann. 1374 (Ibid. p. 16).

[4] Cartulaire de l'Église de Nôtre Dame de Paris, III. 276.—Registre Criminel de St. Martin-les-Champs, p. 162.

Commingled with the fruitless canons of reformation are others equally numerous, directed against the daily increasing efforts of the laity to free themselves from these evils by encroaching upon the privileges and jurisdiction of the church. In 1329, Philip of Valois, disregarding the fate of Belshazzar, which was held up to him as a warning, made a vigorous effort to reform the system.[1] The church for a while maintained her ground, however, and refused to abandon a tittle of her prerogative. The council of Noyon, in 1344, denounced the severest punishment on clerks who tamely submitted to verdicts taken in the civil courts;[2] and those of Paris, in 1346 and 1350, laid an interdict on all places where a clerk was imprisoned and was not surrendered on demand.[3] The struggle was hard, but the church gradually had to yield, and in 1375 an agreement was made between Charles le Sage and Aimery de Maignac, Bishop of Paris, by which the latter abandoned his claim to jurisdiction over all married and unbeneficed clerks, while the royal supremacy was declared in a clause leaving to the bishop his remaining jurisdiction over unmarried clerks only during the king's pleasure[4]—an empty assertion, however, which could not have been made good. Somewhat similar was the agreement made in 1376 between the Bishop of Liége and his rebellious burghers, by which the secular authorities were granted jurisdiction over bigamous clerks and those engaged in worldly pursuits.[5]

The records of the Châtelet, or criminal court of Paris, for the years 1389 and 1390 have been preserved, and their recent publication affords us an instructive insight into the difficulties which beset the administration of justice, and the manner in which the church protected the vilest criminals in her zeal to preserve her prerogatives. Thus, in one series of cases occur-

[1] Bertrandi contra P. de Cugneriis Liber.
[2] Concil. Noviomens. ann. 1344 can. 6, 8.
[3] Concil. Parisiens. ann. 1346 can. 1; ann. 1350 can. 1.
[4] Cartulaire de l'Église de Paris, I. 4.
[5] Chron. Cornel. Zanfliet ann. 1376 (Martene Ampl. Coll. V. 305-6).

ring in 1389, a band of wretches, whose lives were an endless series of fearful crimes, were arrested and brought before the prevôt. They claimed the benefit of clergy, and showed the tonsure to substantiate the claim. Though wholly illiterate, and unable, under the closest cross-questioning, to give intelligible accounts of the times and circumstances of their admission to the church, or to adduce any evidence in support of their assertions, yet the swift and relentless justice of the Châtelet dared not to subject them to the customary procedure of the torture, but gave them various terms of delay in which to produce their letters of tonsure or other proof, and in one or two of the cases these delays were repeated. Had such proof been attainable, they would at once have been remanded to the bishop's court, as had happened to some of them before, when they had subsequently been set free. At length one of them admitted that he was not a clerk, and made a full confession of his guilty career. In the course of this he stated that after being concerned in a most brutal murder, his accomplices advised him to assume the tonsure, in order to secure exemption from secular jurisdiction, and they counselled him, moreover, how to tell the story of his admission to the church, in case he should be apprehended. He further asserted that some of the other prisoners, whose cases were then under advisement, were no more clerks than himself. On obtaining this revelation, the Prevôt of Paris consulted with the chancellor and royal council, and was authorized to torture such of the others as could not prove their clergy. Some of them under torture, and others without it, confessed a hideous catalogue of crimes, and stated that they had adopted the tonsure at the recommendation of their fellows, in a manner which shows that among the dangerous classes it was a recognized measure of precaution against the hour of trouble. One of them, indeed, remarked that they had found, when condemned by the ecclesiastical courts, that they were only subjected to imprisonment, from which they were sure to be let loose again upon society, sooner or later, in some general jail-delivery on the accession

of a prelate or other dignitary. This certainly would seem to be a case in which the church would willingly wash her hands of her putative children, but when the proceedings reached the ears of the Bishop of Paris, he claimed the prisoners and protested against such interference with the liberties of the church. After angry negotiation, however, his demands were refused, and a formal order was made by the royal council that tonsured criminals, who were wholly illiterate, and who were unable to offer any evidence to prove their clergy, should be allowed reasonable time to obtain testimony, and that if they failed in this no heed should be given to the reclamations and protests of the bishop, but that they should be duly tried and convicted or acquitted as laymen. Fortified with this order, the authorities of the Châtelet proceeded with renewed vigor, and speedily brought to justice the whole crew, of whom seven were convicted and executed.[1]

A case which occurred in March, 1390, may perhaps be thought to throw some light on the motives impelling the bishops to vindicate so energetically their jurisdiction for the protection of these "gaigneurs d'aventage." Girart Doffinal, arrested for an attempted larceny, denied the fact and claimed the benefit of clergy. He wore the tonsure and asserted that he had received it ten years before at the hands of the Bishop of Rodez. His letters of tonsure he declared to be at Barbatenne, near Avignon, and he was given six weeks in which to procure them. The six weeks were extended to three months, but when again brought before the court in June, he had no evidence to prove his claim, and he was accordingly exposed to the torture customary in the trials of laymen. This extorted the confession that he had given himself the tonsure three years before at Avignon, by way of safeguard, and in the long array of robberies which he detailed, he alluded to one for which he had been convicted in the court of the Bishop of Rodez and thrown into prison, where he lay for thirteen months until his

[1] Registre Criminel du Châtelet de Paris, I. 47–114 (Paris, 1861).

friends procured his release by paying five hundred francs to the good bishop. The Châtelet did not let him off so easily, and in a few days he was duly hanged.[1]

The tonsure thus was the ægis on which these wretched men relied for impunity, and so important was it deemed to make no mistake in the perplexing questions which daily embroiled the civil and spiritual powers, that the Châtelet had among its officials a sworn barber whose duty it was as an expert to guide the court in its decisions on the obscure cases which were constantly presented. Another portion of his functions proves the careful respect with which the sacred emblem of sacerdotalism was regarded, for whenever a tonsured man failed to prove his clergy, the court immediately ordered him to be shaved, before it would venture to try him, torture him, or execute him. The symbol of the church must be obliterated ere he could be treated as an ordinary criminal.

How useful an official this barber sometimes was, and how desperately the miserable wretches clung to the protecting influence of the church, is shown by a case occurring in January 1390, when Fleurent de Saint-Luc was brought before the Châtelet on a charge of theft. So constant was the claim of clergy that the first proceeding with a prisoner was to examine him minutely for the tonsure or other sign of clericature, and none were found on Fleurent. To prevent collusion he was shut up alone for the night, and next morning, to the surprise of the court, he boldly pleaded clergy and exhibited a tonsured head. The barber was forthwith summoned, and after a careful inspection of the scalp declared that the tonsure was not produced by shaving, but by pulling out the hairs one by one—the ingenious expedient of the prisoner during the night, in his solitary cell. Unfortunately for the success of this device, he had admitted to the jailer that he was betrothed in marriage to a certain Marguerite of Compiègne. The court therefore had no hesitation in pronouncing him a "purs bigames;" as a mar-

[1] Registre du Châtelet, I. 244–54.

ried man he had no right to benefit of clergy, so his pretended tonsure was promptly destroyed by shaving, and he was tried and executed.[1]

A still more perplexing case for the tonsorial expert occurred in October of the same year, when Jehan Jourge, a jeweller, was accused by an accomplice of coining. He pleaded clergy, though he confessed to have been married for twelve years, and the condition of his scalp seems to have puzzled the official barber, for a jury of thirteen of his brethren was summoned to examine the prisoner's head. Under oath they reported that after full investigation they found him not to be tonsured, though he had several bald spots. The court decided that as a married man and untonsured he had no right to plead clergy. The crime was a heinous one and speedy justice was required, so within two days of his apprehension he was convicted, sentenced, and duly boiled to death.[2]

The rapidity of these proceedings is perhaps to be explained by the constant efforts of the Bishop of Paris to reclaim these strayed sheep. Thus, in March of the same year, Jehannin Menel was accused of theft. He confessed it, but pleaded clergy, stating that he had received the tonsure twenty years before. Though wholly illiterate, he was given the customary six weeks in which to present proof, and the officers of the episcopal court undertook to obtain it if possible. The time was extended until June, when, all efforts failing, he was again brought up. To prolong his miserable days, he averred that one of the bishop's retainers could vouch for him, whereupon a commission was appointed to take the alleged testimony. Their report was not made until August 30th, when it appeared that the person in question had no knowledge of the prisoner. Then Menel at length was tortured and confessed that he had given himself the tonsure four years before, in order to escape the consequences of a heavy robbery in which he had been engaged.[3]

[1] Registre du Châtelet, I. 201–9. [2] Ibid. I. 480–94
[3] Ibid. I. 398–406.

While this was in progress, another case occurred in which the bishop did not limit himself merely to friendly aid in seeking for testimony. In July, Ernoul de Lates was accused of a petty theft. He pleaded clergy and showed the tonsure, but on a searching examination was forced to admit that he had assumed it only a fortnight previously, under fear of prosecution. The next day the court was notified that the bishop had made formal application for the prisoner to the Parlement. Ernoul was recalled, and repeated his confession before a royal notary, who reported it to the Parlement, and a decision was rendered in favor of the jurisdiction of the Châtelet. Ernoul then confessed the crime laid to his charge, together with others, and was accordingly condemned to death, when the persevering bishop again appealed to the Parlement, and that body, after a second hearing, again confirmed the proceedings of the Châtelet.[1]

It would be useless to multiply these trivial details. Enough have been given to show the endless conflict between the civil and ecclesiastical jurisdictions, the constant interruption of justice, and the countless evils arising to society from the practical impunity with which the church endeavored to shield the vilest criminals. Few judicial bodies could venture to display the boldness of the Paris Châtelet, under the immediate protection of the king, and supported by the Parlement, yet everywhere the royal courts were seeking to enforce their jurisdiction, and the prelates were battling desperately for the preservation of the old abuses. At this very time, in 1389, the council of St. Tiberius, at Narbonne, drew up, to be laid before the pope and the king, a long list of clerical grievances, prominent among which were the encroachments of the royal courts on ecclesiastical jurisdiction, the refusal to surrender untonsured and married clerks accused of crime, and the disregard of the interdicts laid on all parishes where these abuses

[1] Registre du Châtelet, I. 294–301.

were committed.[1] So in 1403, a synod of Soissons complains bitterly of the secular courts which were accustomed to arrest ecclesiastical delinquents and send them for trial out of the diocese.[2] The times were unpropitious for the church, however, and these complaints availed but little. The Great Schism had vastly weakened ecclesiastical influence, especially in France, and the enormous increase in the royal power under Charles le Sage gave a temporary predominance to the secular element which threatened the speedy extinction of the church's dearest prerogatives. Shortly before the council of Constance we find Chancellor Gerson deploring the miserable condition of the church, and prominent among his complaints is the statement that secular princes no longer hesitated to imprison clerks and try them by the laws of the land.[3] This did not last, however. The church reunited at the council of Constance renewed its vigor, while the disasters of the miserable reign of Charles VI., the wars of Henry V., and the civil broils of the Armagnacs and Bourguignons reduced the temporal authority almost to a nullity, and rendered it utterly incapable of following up its advantages. It is significant of reprisals on the part of the church that, during the English domination, an order of Henry VI. regulating the proceedings of the Châtelet of Paris provides that the first thing to be done on the entrance of a prisoner shall be to examine whether he is clerk or layman; and that to prevent encroachments on secular jurisdiction, a special officer is detailed to be present at every hearing of the ecclesiastical courts of the bishop and chapter, to see that the royal prerogatives are not invaded.[4] As the royal power recovered itself, however, it resumed its aggressions, and the Estates of Languedoc in 1456 complained bitterly to Charles VII. of the little respect paid by the sov-

[1] Gravam. Concil. ap. S. Tiber. ann. 1389 (Martene Thesaur. IV. 345–8).

[2] Statut. Synodal. Suession. cap. IV. (Martene Ampliss. Collect. VIII. 1537).

[3] Gersoni Tract. de Reform. Ecclesiæ cap. xxvii.

[4] Ordonnance de Poitiers, ann. 1425, §§ 15, 149 (Isambert, VIII. 701, 723).

ereign courts to the immunities of ecclesiastical jurisdiction, whereupon the monarch dryly responded by asking the remonstrants to specify cases, when they should be properly provided for.[1]

Still the church gallantly held her ground. In 1468 we find the Cardinal-Bishop of Autun asserting his sole jurisdiction over all members of the ecclesiastical body, and threatening interdicts for any delay in surrendering them to him, with all the energy and conscious strength of an Innocent or a Boniface;[2] and the administration of justice continued to be impeded as of old. In 1516, Francis I. complained to Leo X. of the crimes and scandals committed with impunity by those who were connected with the church, and the pontiff granted, as a special favor to France, that unless the tonsure and habit had been worn within four months of the date of the offence for which a criminal was arraigned, he might be subject to secular jurisdiction.[3] This was a very imperfect measure of relief, and some fifteen years later, Chassanée, one of the most distinguished jurists of the day, lays it down as an absolute principle of law that a clerk is exempt from secular justice both before and after conviction; but he couples this with numerous exceptions, rendering the application of the rule almost as "involved and troublesome" as Sir Matthew Hale described the English law to be, showing how eagerly the courts and lawyers were laboring to find some relief from the difficulties with which the church surrounded the administration of justice.[4]

The evils arising from this state of things were by no means confined to the escape of malefactors who personated the ecclesiastical character. The impunity conferred by the benefit of

[1] Doléances des Etats de Languedoc, art. 25. (Ibid. IX. 298, 311.)

[2] Statut. Synod. Eccles. Æduens. ann. 1468 cap. 47 (Martene IV. 514–5).

[3] Bull. Romanum decet Pontif. ap. Chassenæi Comment. Consuet. Burgund. p. 184 (Ed. 1590).

[4] Chassenæi op. cit. pp. 182–91, 206.

clergy on clerical offenders necessarily exercised the most unfortunate influence on the church itself, and was a powerful element in bringing about the corruption of the ecclesiastical body which was the disgrace of the middle ages. An honest archdeacon of Salzburg, writing in 1175, complains that the clergy were restrained by no fear of punishment, and therefore abandoned themselves to excesses which laymen hardly dared to attempt. However vile might be their lives, they felt no dread of the ecclesiastical authorities, for they could not be accused by the laity, and would not accuse each other, since all were guilty of the same practices, and each endeavored to protect his companions in sin. In fact, he adds, they are surely the scales of Leviathan which cling to each other so closely that no weapon can penetrate into its pestiferous body.[1] The archdeacon is especially concerned at the immunity which was thus conferred on the concubinage and adultery universal among his clergy, and a practical illustration of this particular result was afforded a hundred and fifty years later in Naples, when, in 1317, under Robert the Good, an effort was made to enforce a statute imposing a fine on the concubines of priests who refused, for a year after excommunication, to abandon their guilty connection. The priests vigorously assumed the cause of their partners, and succeeded in extending the benefit of clergy to their concubines, who, as part of the clerical family, they asserted were liable to prosecution only in the ecclesiastical courts.[2] Having established this as a regular rule of law, they were liberated from the sterner jurisdiction of the laity, and felt reasonably secure that their illicit relationships would not be disturbed. So long as the benefit of clergy existed, therefore, there was no possibility of purifying the church; and when the Hussites negotiated with the council of Bâle for reconciliation, they wisely made its abrogation one of the four conditions on which they would consent to return to the fold.[3]

[1] Henric. Salisburg. Archidiac. de Calamit. Eccles. Salisb. cap. ix.

[2] Giannone, Apologia, cap. 14.

[3] Hartzheim. Concil. German. V. 760–73.

On this point the church was immovable; the evil continued unchecked, and it afforded, at the dawn of the Reformation, a fair mark for the indignant eloquence of the reformers. Thus, in 1521, Luther, in his controversy with Ambrogio Caterino, exclaims: "Finally criminals can neither be reproved, nor accused, nor punished, except by the pope, who could not if he would, and now does not wish to. From this prolific source arises their iniquity; hence the debaucheries, the adulteries, the fornications, the uncleanness, the avarice, the fraud, the swindling, the universal chaos of crime, which not only abounds but reigns everywhere, unpunished and unchecked by fear of God or man. If any one reproves them, he is guilty of sacrilege and of treason to the pope. All this arises from those accursed laws which exempt the clergy and all belonging to them from secular accusation, trial, and punishment."[1] It seems to be the echo of the voice of Henry of Salzburg, sounding through the interval of three centuries and a half; and fierce as was the declamation of the sturdy reformer, he was not guilty of exaggeration if we may believe the formal complaint of the orthodox, addressed in 1522 by the representatives of the empire assembled in the Diet of Nürnberg to Adrian VI., praying for the reform which was confidently expected at his hands. This authoritative document, in enumerating the disorders existing in the church, asserts that the benefit of clergy was the direct source of countless cases of adultery, robbery, coining, homicide, arson, and false witness committed by ecclesiastics, and significantly adds that unless the clergy were relegated to secular jurisdiction, there was reason to fear an uprising of the people, for no justice was to be had in the spiritual courts against a clerical offender.[2]

It was not only in the license afforded to individual criminals that the immunity of the clergy made the church odious to the people, but also in the opportunity which it afforded of

[1] Lutheri Opp. T. II. fol. 374 a. (Jenæ 1581).

[2] Gravam. Nat. German. cap. 21 (Le Plat Monument. Concil. Trident. II. 178–9).

exercising oppression and irresponsible despotism, for which no redress could be obtained. That this was not lost sight of by the reformers in their efforts to arouse the populations to overthrow the hoary structure of sacerdotalism is shown in Sir David Lyndsay's "Satyre of the Thrie Estaits," where he introduces a mendicant recounting the misadventures which had reduced him to beggary. He had had a mare and three cows, wherewith he had supported wife and children, besides his aged parents. The father dying, his mare had been seized by the laird for heriot, while the vicar carried off a cow. Then his mother died, and the vicar took another cow. This diminution of their substance so preyed upon his wife, that she soon followed, when the vicar claimed as his fee the last remaining cow, and the parish clerk seized their movables. His interlocutor asks whether the parson had not stood his friend, but is told that the latter had excommunicated him for being in arrears with his tithes, and that he has but a groat remaining in the world, with which he is begging his way to St. Andrews to fee a lawyer to see whether he cannot get justice of those who have plundered him of his little all. He is laughed at for his pains:—

> "Thou art the daftest fuill that ever I saw.
> Trows thou, man, be the law to get remeid
> Of men of kirk? Na, nocht till thou be deid"—

and presently this last remaining groat is filched from him by a pardoner, under promise of remitting for him a thousand years' penance in purgatory.[1] The satire is broad, and yet it has sufficient verisimilitude to explain to us the bitterness with which the ancient church was regarded by the peoples which threw off her yoke.

A feeble corrective of these manifold evils was proposed by

[1] Sir David Lyndsay's Works P. IV. pp. 451–61 (Early Engl. Text Soc. 1869). It is somewhat remarkable that the "Satyre of the Thrie Estaits" was repeatedly represented in public as a dramatic performance in 1539, prior to the first movements of the Reformation in Scotland (Rogers, Scotland, Social and Domestic, p. 204; Grampian Club, 1869).

Pius III. in his projected Bull of Reformation, prepared in 1546, to the effect that clerks wearing secular habits, and refusing to abandon them on due admonition, should not be entitled to the benefit of clergy, but should share the wholesome rigor of secular law with their secular brethren.[1] This would have been wholly inadequate to the necessities of the times, as it left the iniquities of the clergy at large untouched; but as the bull was prudently suppressed through the opposition of those whose license it threatened to curtail, its suggestions are only of interest as showing the impossibility of enforcing any such distinction as Pius proposed. The rule which he enunciated had been the law of the church for three centuries, and its attempted revival merely shows that it had been completely neglected and rendered obsolete.

As the church apparently could not or would not reform itself, the laity grew bolder, and insisted on relief in some shape. Thus, when Charles V., feeling himself juggled out of the reform promised by the council of Trent, undertook to purify for himself the Teutonic church, the synod which in 1549 assembled at Salzburg in obedience to his commands undertook to complain of the invasion of clerical immunity which was daily growing more audacious on the part of the secular judges. The progress of Lutheranism had weakened the respect felt for the church, even by the orthodox; and Duke William of Bavaria, zealous Catholic though he was, responded briefly that the secular courts would not have undertaken to enforce the laws on the clergy had they not found that the bishops habitually allowed clerical offences to remain unpunished. The synod replied by a series of grievances, among which were enumerated the infractions of clerical privilege. The princes concerned were not disposed to listen to these, and proposed that they should be submitted to the Emperor Ferdinand, who prudently suppressed them, and no action was had on the subject for twenty years.[2]

[1] Published by Clausen, Copenhagen, 1849.

[2] Dalham, Concil. Salisburg. pp. 328–9.—Hansiz. German. Sacra, II. 618.

At length the hopes of the purer portion of the Catholics grew high as the final convocation of the council of Trent in 1562 assembled with plentiful promises of the reformation which every one deemed essential to the preservation of the orthodox faith. One of the principal reforms expected of the council was the removal of the abuses, which, under guise of clerical immunity, scandalized the faithful and corrupted the church. This is evident in the projects submitted to the assembled fathers by the various princes whose zeal for the faith led them to point out the evils that rendered their peoples impatient of the yoke. Thus the honored Bartholomew a Martyribus, Archbishop of Braga, drew up for Sebastian of Portugal a series of articles of reformation, which was presented in the name of the Portuguese nation. In this it was proposed substantially to abolish the four lower orders of the priesthood, leaving nothing below the subdiaconate, in order to preserve the church from the endless scandals arising from the hordes who took these lower orders for the single purpose of abusing the immunity conferred by them.[1] The Spanish bishops asked for a less radical measure, only suggesting that married clerks, who wore secular habits, should not enjoy the benefit of clergy; and they coupled this with a request that even papal authority should not be allowed to sanction infractions of clerical privilege.[2]

The Emperor Ferdinand, who had an intimate acquaintance with the foulness of the Teutonic church, and the dangers of the aggressive Lutheranism of the age, was particularly earnest in his demands for a thorough reform which should check the progress of the Reformation. Under his commands, a series of articles was drawn up by one of his most trusted counsellors, Frederic Staphylus, whose learning and orthodoxy had won for him the cap of the doctorate of theology at the hands of the pope himself, when his marriage had rendered the universities

[1] Artic. Sebast. R. Portug. No. 39 (Le Plat op. cit. V. 84).
[2] Artic. Reform. Episc. Hispan. No. 25, 27 (Ibid. V. 565).

doubtful about conferring the honor upon him. In this paper, submitted to the council in the name of the emperor, the exemptions of the clergy were denounced with little ceremony. "Crimes remain unpunished, which is the greatest of evils, and ruinous to the public welfare. . . . . A lay murderer is justly put to death by the law, while an ecclesiastic escapes with trifling penance, or none at all. . . . . The clergy sin with impunity, whence it arises that they are a scandal to the children of God, and a pest to the state." He argues that these privileges are derived from human and not from divine law, and that they can be abrogated by the secular power, to the manifest advantage of both church and state.[1] The same assertions are made in another consultation prepared by order of the emperor to be laid before the council. "The insolence of the clergy has risen to that point that they think they have a right to commit crimes which in laymen are punished with the utmost rigor of the law."[2]

The spirit in which these representations were received is shown in the extraordinary proposition presented by the papal legates to the ambassadors of the sovereigns, Sept. 23, 1563. Two-thirds of the prelates present at the council had been induced to pledge themselves that no reformation of the church should be debated until this paper had been considered, and no more effectual mode of evading the pressure for reform could be conceived. It demanded, as a condition precedent to ecclesiastical reformation, that the relations between the various princes and the church should be revised in a sense which swept away all concordats and pragmatic sanctions, and deprived the sovereigns of what little control they enjoyed by rendering the church entirely independent. In this comprehensive scheme, the widest interpretation was given to the claims of ecclesiastical jurisdiction; all questions of doubtful clerkship were reserved for the spiritual courts alone; no

[1] Frid. Staphyli Consil. No. 50–2 (Le Plat V. 227–8).
[2] Consult. Imp. Ferdinand. cap. 13 (Ibid. V. 244).

appeal from them was allowed to the secular tribunals; the anathema was denounced against all who should infringe on the ancient canons, and in general everything that had been left to the secular power in a struggle of centuries was swept away.[1] As was expected, the fierce opposition of the princes, whose rights of appointment and patronage were abolished in this scheme, caused it speedily to be dropped, but its animus is none the less interesting as developing the policy of Rome, and the objects of papal ambition.

Animated by this spirit, it was not likely that the council would lend itself to any searching or adequate reform. At its previous convocation, in 1551, it had already adopted a canon declaring that no secular ecclesiastic should be withdrawn from the jurisdiction of his bishop on any pretence[2]—a rule which infringed upon the judicature by this time established in some countries, such as France and the Netherlands.[3] Under the protests of the princes, indeed, it was at last willing to leave to their fate the hordes of worthless vagabonds who sought by a nominal affiliation on the church to obtain the immunity from punishment consequent on its prerogatives; but no disposition was shown to abandon one tittle of the rights claimed for those who held a substantial place in the ecclesiastical body. Thus the reform was restricted to forbidding any one from holding a benefice before his fourteenth year, or untonsured, or not in the lower orders; and no one could claim benefit of clergy unless he held a benefice, or, wearing the habit and tonsure, was employed in the service of a church, or prosecuted his studies in a seminary. On the other hand, the customs of those countries which subjected married clerks to the secular courts were disregarded by reviving a decretal of Boniface VIII., which granted them the privileges of the clergy, pro-

[1] Le Plat VI. 228–9, 232–3, 249.

[2] Concil. Trident. Sess. XIV. de Reform. can. 4.

[3] See the remonstrances of the Sovereign Council of Brabant (Le Plat VII. 84).

vided they wore the tonsure and habit.[1] Another canon, regulating the proceedings and jurisdiction of the ecclesiastical courts, manifested a determination to win back all that had been lost during the preceding two centuries;[2] while a final declaration asserted the continued vitality of all the ancient canons, decrees of councils, and papal sanctions which defined the liberties of the church, the immunities of her members, and the punishments for infringing those immunities; and all emperors, kings, princes, and states were emphatically warned that these penalties would be enforced with the utmost rigor.[3]

This action called forth vigorous remonstrances from the secular powers; and that they were not mistaken in the belief that it was intended to maintain and perpetuate the ancient abuses, is clearly manifested by the action of the synod of Salzburg, assembled in 1569 to publish the council of Trent. This assemblage framed an elaborate system of church polity, based on the Tridentine canons, so as to reorganize the ecclesiastical establishment, define its position and duties, and adapt it in every respect to the new order of things. This project was formally approved by Gregory XIII. in 1572, and the Emperor Maximilian was ordered to enforce it.[4] As presenting an authoritative exposition of the revised policy of the church, it is therefore worthy of note that it asserts in the most formal manner the immunity of the clergy as founded not only

[1] Concil. Trident. Sess. XXIII. de Reform. can. 6.—Cf. can. 7 Extra III. 3; can. un. in Sexto III. 2. This called forth vehement remonstrances from the states of the Netherlands and France (Le Plat VII. 33, 43, 61, 269).

[2] Concil. Trident. Sess. XXIV. de Reform. can. 20. This likewise gave occasion to lively reclamations—see Le Plat, VII. 17, 18, 66, 87. The celebrated Richardot, Bishop of Arras, responded by a vigorous statement of the little respect paid by the courts to the claims of clerical immunity (Ibid. 28, 29). Subsequently, however, in 1566, he deplores the scandals caused in the church by the absence of punishment for clerical offenders, who, according to popular belief, were always enabled to escape by a moderate pecuniary sacrifice. (Ibid. p. 186.)

[3] Concil. Trident. Sess. XXV. can. 20.

[4] Dalham Concil. Salisburg. pp. 557, 568.

on human but on divine law. Any decision rendered against a clerk by a secular tribunal, whether in a civil or a criminal case, is pronounced null and void, and the judge granting it, or even endeavoring to compel a clerk to appear before him, is excommunicated until he renders full satisfaction, pays whatever damages may have been caused by his action, and undergoes proper penance. The utmost concession allowed is that when a clerk has committed some crime of a peculiarly heinous character, and is supposed to be on the point of absconding, the civil authorities may arrest him on condition of delivering him within twenty-four hours to the episcopal officials;[1] who, it is true, are urged to perform their functions without fear or favor, and are prohibited for the future from taking bribes to allow criminals to escape.[2]

Not only were the officers of secular justice thus forbidden to take cognizance of clerical offences, but even the people were enjoined to shut their eyes to the sins of their pastors, no matter how scandalous might be the lives of the latter. They were warned that the fate of Ham and the curse of Canaan awited those who did not hasten to conceal the shame of their fathers; and as the priests were the fathers of the people, it followed that their sins were not to be commented on or bruited abroad. In fact, it was asserted that a wicked priest was a chosen instrument selected by God to punish a wicked people; he was therefore to be venerated; and those who suffered from him were on no account to resist the will of God by accusing him of his crimes.[3] The full audacity of such teaching as this can be appreciated only after a fair understanding of the unspeakable corruption of the whole ecclesiastical body in the sixteenth century, when popes and councils united in declaring that the laity were vitiated by their priests, that religion was rendered odious by the vices of its members, and that the

[1] Concil. Salisburg. XLVI. Const. XXXIX. cap. 1, 2, 3. (Dalham op. cit. pp. 481–2.)

[2] Ejusd. const. lxiii. cap. 1, 2 (op. cit. pp. 541–2).

[3] Ejusd. const. lvii. cap. 4, 5 (op. cit. pp. 512–3).

Lutheran heresy was the natural protest against the clerical vileness which no system of ecclesiastical discipline could control.[1] That this should be the case was the inevitable result of such doctrines, and though the council promulgated various regulations to check the prevalent vices of the priesthood, it is no wonder that when Pius V., not long afterwards, wrote to the Archbishop of Salzburg, urging him to increased energy in extirpating the concubinage which was universal among the ministers of the altar, the prelate sadly responded that he had done everything in his power, that he had proved utterly unsuccessful, and that he despaired of being able to effect the desired reform.[2]

The Tridentine fathers and their obedient prelates might amuse themselves with adopting and promulgating brave resolutions proclaiming the imprescriptible rights of the clerical body, but the inevitable progress of civilization and enlightenment was against them. The corruptions which brought about the Reformation had gradually divested the church of its claims to respect, and the Reformation itself had had its influence on the orthodox as well as on the reformer. Never again could the church hope for implicit obedience, or expect that men should listen to its commands as to the oracles of God. Scarcely had the ink fairly dried on the canons of Trent, when the Polish Diet of 1565 enacted that a clerk charged with any criminal offence should be tried by the secular and not by the

[1] See Concil. Colonicns. ann. 1527 (Hartzheim Concil. German VI. 210–13)—Concil. Augustan. ann. 1548 (Ibid. VI. 388)—Breve Pii V. ad Archiep. Salisburg. (Ibid. VII. 231).—Concil. Constant. ann. 1567 (Ibid. VII. 455)—Breve Pii V. ad Abbat. Frisingens. ann. 1567 (Ibid. VII. 586). —Even in the very council which promulgated these doctrines, Christopher Spandel, in the closing address, declared that the vices of the clergy had made them deservedly the objects of popular contempt and detestation (Hartzheim VII. 407). The same admission is made in the opening address of the legates at the council of Trent in 1546 (Le Plat Monument. Concil Trident. I. 40–1).

[2] Dalham op. cit. pp. 557, 558.

spiritual court.[1] Indeed, even while the council was yet in session, the French government, despairing of the long promised reformation, took the matter into its own hands, and in January, 1563, solved the question by decreeing that no clerk beneath the grade of sub-deacon should enjoy the benefit of clergy.[2] Some concession was made in 1566 by including within the privileged limit those in orders actually engaged in the ministry of the church, but this was counterbalanced by reserving to the civil courts the proof of clergy.[3] Still more significant of the tendencies of the age was the fact that while France was risking her existence in the effort to crush her Huguenot children, she never could be persuaded to accept and publish the council of Trent, notwithstanding the most urgent and repeated efforts of the Holy See. The Venetians, also, in 1605, showed their contempt for the claims of the church by imprisoning two ecclesiastics whom they tried by the secular tribunals, thus contributing to the rupture which made Fra Paolo celebrated. As though to console himself for the consequent defeat, Paul V., in 1610, issued a fierce anathema, to be recited in all churches on every Maundy Thursday, wherein he proclaimed excommunication and interdict against all who should infringe in any way on clerical immunity—censures only removable by the pope himself.[4] In 1627, Urban VIII. refurbished and reissued the Bull *In Cœna Domini*, one of the clauses of which pronounced *ipso facto* excommunication against all officials concerned in bringing ecclesiastics before secular tribunals, and all potentates issuing laws under which they could be so tried.[5] Notwithstanding that this Bull was yearly read in all the churches, the bigoted

[1] Krasinski, Reformation in Poland, I. 131.

[2] Ordonnance de Roussillon, Janvier 1563, art. 21 (Isambert, XV. 165).

[3] Ordonn. de Moulins, Févr. 1566, art. 40, 55 (Ibid. pp. 200, 203).

[4] Lünig. Cod. Ital. Diplom. T. II. p. 2013. Bull. Pastoralis Rom. Pontif. §§ 15, 16, 19, 20, 24 (Mag. Bull. Roman. III. 250).

[5] Bull. Pastoralis Rom. Pontif. § 15 (M. Bull. Rom. IV. 114).

Louis XIV. while enforcing Catholicism with relentless severity, yet manifested complete disregard of the pretensions of the church by creating, in 1695, mixed tribunals of ecclesiastics and laymen for the trial of clerical offenders.[1] If, during the eighteenth century, the benefit of clergy was still maintained, it was under such limitations and restrictions as showed that it existed only by sufferance of the civil power,[2] and in many places it was virtually abrogated.[3] In this, however, Spain was exceptional. The old privileges were there maintained, leading to the old abuses. In 1745, in the Spanish colony of New Granada, we find the secular authorities complaining of the forestalling of cattle by ecclesiastics, sometimes on their own account, and sometimes for laymen who used the clergy as agents in order to enjoy the benefit of the ecclesiastical courts to escape the provisions of the laws against regrating; and some years later the complaint is renewed in more general terms, that laymen transacted their business in the name of ecclesiastics in order to enjoy the benefit of their privileges in court.[4] Throughout Europe, however, the Revolution of 1789 naturally swept away what remained of these abuses, with the other shreds and tatters of class-privilege, and even in Austria at the present day all men at last are once more equal before the law.

Yet an infallible church cannot abandon a claim that has once been made and admitted. If tyrannical princes and republics insist on the equality of the citizen, and subject clerical offenders to the laws of the land as though they were ordinary mortals, it is simply an abusive exercise of power, to which

[1] Ordonn. Avril, 1695, art. 38 (Isambert, XXI. 254).

[2] Héricourt, Loix Ecclés. de France, E. xix. (Neufchatel, 1774). See also Dupin, Manuel du Droit Pub. Ecclés. Paris, 1845, p. 39.

[3] In Bavaria, for instance, the struggle was kept up for two hundred years, and in 1772 we find the clergy complaining of the secular jurisdiction exercised over them in criminal matters as a violation of their chartered rights.—Dalham Concil. Salisb. p. 644.

[4] Groot, Historia Ecclesiastica y Civil de Nueva Granada, Bogotá, 1869, I. 371, 376.

the church submits with Christian meekness when she has no means at hand to assert her rights. The sacro-sanct council of Trent, under the direct inspiration of the Holy Ghost, confirmed the privileges enjoyed for centuries, and announced to all earthly potentates that any invasion of those privileges was punishable with the dread anathema that bars forever the gates of salvation. As long as this remains unrepealed by an assembly equally gifted with the divine power, it is the irrefragable law which overrides all human ordinances. In fact, it is doubtful whether even an œcumenic council could undertake to abandon these positions, for Pius IX., in an apostolic letter of 1851, has condemned as a heresy the doctrine that clerical immunity drew its origin from the civil power, and asserts that it is derived from the direct order of God.[1] So when, in May, 1851, the Republic of New Granada dared to abolish the ecclesiastical courts and to subject the clergy to the secular tribunals, Pius lifted up his voice and proclaimed to the nations that the act was null and void, and that all concerned in it had incurred the censures inevitable upon those who wilfully seek to violate the imprescriptible rights of the church.[2] Not less energetic and decisive was his action when the Mexican constitution of 1855 proposed to abolish the benefit of clergy; the constitution was at once declared to be annulled, and its supporters were warned of the penalties in store for them.[3] Evidently the church only lacks the power and not the will to interfere as of old in the civil and political affairs of the nations. So, in the manifesto of the bishops who assembled in Rome for the canonization of the Japanese martyrs in 1862, one of the complaints made against the "Sub-Alpine Government" was that it did not hesitate to subject the priests of God to the unhallowed courts of secular law[4]—the principal motives for the protest being apparently that the Italian cabinet had found

[1] Litt. Apostol. *Multiplices inter*, x. Jun. 1851.
[2] Alloc. *Acerbissimum*, 27 Septemb. 1852.
[3] Alloc. *Nunquam fore*, 15 Decemb. 1856.
[4] Declarat. Episc. 8 Junii 1862.

itself obliged to prosecute the bishops of Bologna and Fano for issuing circulars ordering their priests to make use of the confessional for the purpose of stimulating desertion in the Italian army. In view of these declarations of principle, it is therefore a matter of course to find, in the Syllabus of December, 1864, the immunity of ecclesiastics from secular jurisdiction claimed as a matter independent of the civil law, and to see that potentates are warned that they have no right to curtail the exclusive control of the spiritual courts over all persons and things appertaining to the church.[1] In fact, if any doubt could remain as to the position of the Roman curia on the subject, it would be removed by the latest expression of the authoritative volition of the Pope. In his Bull of Oct. 12th, 1869, replacing the older Bulls *In Cœna Domini*, defining the offences which entail *ipso facto* excommunication, Pius IX. denounces this last and severest of ecclesiastical punishments on all concerned, directly or indirectly, in subjecting ecclesiastics to secular courts, and on all powers which promulgate laws or statutes infringing on the privileges of the church; and he expressly prohibits any prelate from absolving such offenders.[2]

Rome therefore looks back with fond regret to the days of Innocent III., and eagerly anticipates the time when opportunity shall enable her to revendicate the rights of which she has been deprived by the irreligious generations of the past three centuries. Yet in weighing the countless blessings which have been vouchsafed to her church during the eventful past, it would be difficult to find one more substantial than the "persecution" which has restrained her from the suicidal gratification of her own inordinate desires.

[1] Syllab. Dec. 1864, Prop. 30, 31.

[2] Bull. *Apostolicæ Sedis*, IV. Id. Oct. 1869, cap. 7.

EXCOMMUNICATION.

IN the long career of the church towards universal domination, perhaps the most efficient instrument at its command was its control over the sacrifice of the altar. Through this it opened the gates of heaven to the obedient, and plunged the rebellious into the pit of hell; and the generations which implicitly believed in its authority over the world to come were necessarily rendered docile subjects in this world. Armed with power so vast and vague, it could intervene decisively in the dissensions between sovereigns and people, and subdue them both to its designs of highest state-craft, making each the means to humiliate the other; while, at the same time, it could control the life of the obscurest peasant, and bind him helplessly in blind submission to the behests of its humblest minister. This despotism, so absolute and so all-pervading, which dictated the action of kings, while it interpenetrated every fibre of society, was based upon the religion of love, and self-sacrifice, and humility. Human history, so fruitful of paradoxes, scarce offers an example more notable of the perversion of good into evil. The divine precepts of charity, forgiveness, and self-abnegation, distorted by the ignorance, the passion, and the selfishness of man, became the warrant by which greed and ambition attained the fruition of their wildest hopes.

To describe minutely the countless vicissitudes by which these results were reached would greatly transcend the limits of the present essay. I can only propose to present such a

general view of the subject as may aid the student in tracing the origin of some of the moral and material forces which have moulded our civilization, and which, in a degree somewhat modified, are still at work around us. The church is infallible; it draws its inspiration from above, and cannot rightfully be called to account by any earthly power for the use which it may make of the authority confided to it. Thus autocratic by the organic law of its being, uncontrolled and uncontrollable by any human power external to itself, even the observer of the present may find profit in contemplating what was its policy in the past, and the use which it has made of the supremacy conceded to it of old.

PRIMITIVE DISCIPLINE.

When Jesus said to his disciples—

"Moreover, if thy brother shall trespass against thee, go and tell him his fault between thee and him alone: if he shall hear thee, thou hast gained thy brother.

"But if he will not hear thee, then take with thee one or two more, that in the mouth of two or three witnesses every word may be established.

"And if he shall neglect to hear them, tell it unto the church, but if he neglect to hear the church, let him be unto thee as a heathen man and a publican.

"Verily I say unto you; whatsoever ye shall bind on earth shall be bound in heaven; and whatsoever ye shall loose on earth shall be loosed in heaven."—(*Matt.* XVIII. 15-18.)—

it would seem as though they at once proceeded to draw from his words deductions at variance with the exhaustless love and pity which it was his mission to preach to man, for the sacred narrative proceeds—

"Then came Peter to him and said, Lord, how often shall my brother sin against me and I forgive him? till seven times?"

And Christ, seeing that his precept was in danger of being misinterpreted, at once detected and rebuked the hidden thoughts of his disciples—

"I say not unto thee, until seven times; but, until seventy times seven."

Frail human nature grasped eagerly the reversion of the symbolical power to bind and to loose, and interpreted it in the most rigid and odious form. It rejoiced in the authority to treat an erring brother as a heathen and a publican, but with all convenient speed it forgot the limitation to forgive him seventy times seven.

The teachings of the apostles shared the same fate as those of the Master. Jesus had said to them (*John* XIII. 35)—"By this shall all men know that ye are my disciples, if ye have love one to another," and they never tired of inculcating that "God is love; and he that dwelleth in love dwelleth in God, and God in him" (I. *John* IV. 16), and of preaching forgiveness, meekness, and long-suffering. Christ had said, "Judge not, that ye be not judged," and Paul repeated after him (*Rom.* XIV. 10), "For why dost thou judge thy brother? or why dost thou set at naught thy brother? for we shall all stand before the judgment-seat of Christ." When one of the faithful had strayed, he was to be brought back with all gentleness and kindness—"Brethren, if a man be overtaken in a fault, ye which are spiritual restore such an one in the spirit of meekness; considering thyself, lest thou also be tempted" (*Galat.* VI. 1). And above all, those to whom the guidance of their brethren was confided were warned to exercise their authority meekly and humbly—"In all things approving ourselves as the ministers of God, in much patience, in afflictions, in necessities, in distresses" (II. *Cor.* VI. 4). "Neither as being lords over God's heritage, but being ensamples to the flock" (I. *Peter* V. 3).

Yet with all this, the old stern exclusive spirit of his Jewish training occasionally breaks out in St. Paul, and it suited the

temper of later generations rather to give heed to his denunciations of punishment than to obey his injunctions of forbearance and forgiveness.

It was no part of the recognized duty of the apostles to frame an elaborate system of ecclesiastical discipline that should regulate the church of the future in its development over the earth. Believing, as they did, that the second coming of Christ was at hand, temporary regulations alone seemed necessary for the scanty flock of believers, whose enthusiasm in submitting themselves to the law of love was a sufficient guarantee against serious trouble, during the short time that was to elapse before the Messiah himself should return to govern the world. Accordingly, the indications which are furnished in the Pauline epistles as to the nature of the spiritual laws for the control of the Christian churches are necessarily vague and imperfect. Still, they show us the existence of two kinds of penalties. The first and most severe is the mysterious one which has puzzled so many commentators—"To deliver such an one unto Satan for the destruction of the flesh, that the spirit may be saved in the day of the Lord Jesus," which is threatened in I. *Cor.* v. for the punishment of a moral offence, incest, and in I. *Tim.* i. 20, to repress the spiritual sin of heresy. The other penalty is segregation from the church—"But now I have written unto you not to keep company, if any man that is called a brother be a fornicator, or covetous, or an idolater, or a railer, or a drunkard, or an extortioner; with such a one no not to eat" (I. *Cor.* v. 11). Yet even this was to be administered in a loving spirit, and was evidently an infliction of comparatively trivial import.

"Now we command you, brethren, in the name of the Lord Jesus Christ, that ye withdraw yourselves from any brother that walketh disorderly, not after the tradition which he received of us.

"And if any man obey not our word by this epistle, note that man, and have no company with him, that he may be ashamed.

"Yet count him not as an enemy, but admonish him as a brother" (II. *Thess.* iii. 6, 14, 15).

And even the anathema maranatha which subsequently came to have a significance so awful meant evidently at this time only a setting aside or separation.[1] As we shall see, however, in process of time all of these penalties became practically merged into one, combining all the severity of each; and the offender who was cut off from the church, was delivered to Satan, not in the flesh for the salvation of the soul, but in the soul for eternity. That a man believing himself to possess a power so fearful could find pleasure in wielding it, and in condemning his fellow-creatures to a destiny so unspeakable, is an exhibition of the worst and darkest side of human nature; but when we see this performed daily in the name and for the honor of a God of love and pity, and for the honest purpose of enforcing the law of charity and universal brotherhood, we are led to face one of the mysteries of man's many-sided character which are past solution by our finite intelligence.

This penalty of simple segregation or expulsion was, of course, a matter inherently within the power of each congregation of the faithful. A body bound together merely by the ties of spontaneous aggregation could choose its own associates, and could refuse to consort with those whom it might consider unfitted for or unworthy of companionship, of which the test became, at an early period, the act of partaking of the Lord's Supper. The references to this by St. Paul (I. *Cor.* x. 16–18; xi. 20–34), combined with some obscure allusions to breaking bread (*Acts* ii. 41–46; xx. 7–11), would seem to show that at first this test was eating in common, and that in obedience to the command, "Whatsoever ye do in word and deed, do all in the name of the Lord Jesus, giving thanks to God and the Father by him" (*Coloss.* iii. 17), the early Christians felt that every act of the believer should be hallowed, that his whole life was a ceaseless dedication to God, and that his food and

[1] Cf. Rom. ix. 3.—I. Cor. xii. 3; xvi. 22.—Galat. i. 9. The word maranatha is simply a compound of *Maran*, Lord, and *atha*, cometh (Buxtorfi Lex. Chald. col. 2466).

drink were the gift of the Lord, to be taken in thankfulness, as making him one with the Saviour who had died for him. Yet as the circle of the faithful enlarged, a celebration of this kind could not but give rise, among weaker brethren, to occasional scenes which to devout minds were a disgrace to the church, and a scandal to the memory of the Crucified. It was apparently to repress these that St. Paul ordered that the demands of animal hunger and thirst should be satisfied at home, and that the meal of fellowship in the place of worship should be sober, and worthy of the recollections which it was designed to excite.

In process of time this celebration seems to have become separated into two—the *agape*, or love-feast,[1] and the ministration of the Eucharist, though the latter long retained its original aspect of a meal, rather than a ceremony purely religious. Thus, a century later than St. Paul, we learn from Justin Martyr that, after prayers and thanksgiving, the attendant deacons distributed among the congregation the bread and wine, which were also carried home to those prevented by legitimate reasons from attending at worship.[2] That the Eu-

[1] The *agapæ*, or love-feasts, continued long to be celebrated in the churches. About the middle of the fourth century the council of Laodicæa endeavored to abolish them by forbidding participation in them to both clerks and laymen (can. 27, 28), a prohibition which was imitated in 397 by the third council of Carthage (can. 30).

[2] The extreme reformers of the modern Italian church, in their efforts to restore the primitive simplicity of worship, imitate, or rather exceed, the absence of ceremony described in the text. According to a recent traveller who attended one of their conventicles in Florence, the elements were represented by a loaf of bread and a decanter of wine, placed upon a common table in the midst of the assembly. After various religious exercises, one of the congregation arose and broke off a piece of bread, which he ate and passed the loaf to a neighbor, and it was thus handed around. He also poured out a tumblerful of wine, took a sip, and it then followed the loaf. Unimpressive as this may seem, it derives full significance from the intense religious enthusiasm of the Evangelical Christians, as they call themselves. This, indeed, may be seen by the hymn which

charist still was more than the mere symbolical morsel of bread and mouthful of wine and water, is evident when the same author explains that it was provided by the voluntary oblations of the faithful.[1] The same is shown in the next century by the reproaches of Cyprian to an avaricious dame, that she comes to the Lord's Supper without bringing her share of the sacrifice, and that, although she is rich, she partakes of the Eucharist which has been contributed by the poor.[2] Even towards the close of the fourth century, a sermon attributed to St. Augustine echoes the remark of Cyprian in stigmatizing as disgraceful the conduct of a man, able to make oblations, who receives the communion from the offering of another.[3] About the same period there appears to have arisen the necessity of limiting the nature of the oblations, which seem to have become varied, leading doubtless to abuses and perversions of the rite.[4] Such portions of these eucharistic offerings as were not consumed by those present, or conveyed to the absent, were distributed among both clergy and laity, especial care being taken in general that none should reach the catechumens, who

was sung immediately before the distribution of the elements. I give the first two and last two verses :—

"Giojosi o fratelli,
Sediamo alla mensa,
In cui sotto un velo
La fede dispensa
Le arcane, le sante
Dovizie d'amor.

"Il pane e il vino
I simboli sono
Di grazia perenne,
Di pace e perdono,
Del corpo e del sangue
Del nostro Signor.

"Il caro compiamo
Precetto divino ;
Gustiamo o fratelli,
Nel pane e nel vino
Le arcane, le pure
Dolcezze d'amor.

"Si celebri in questo
Santissimo rito
Del nostro riscatto
Il prezzo infinito,
In fin che dai cieli
Non torni il Signor."

Talmadge's Religious Reform in Italy, London, 1866, pp. 89–91.

[1] Justin. Martyr. Apol. II.
[2] Cyprian. de Opere et Eleemosyn. cap. xv.
[3] Augustin. Sermon. Append. Serm. cclxv. cap. 2. (Ed. Benedict.)
[4] Concil. Carthag. III. can. xxiv.

were not permitted to join in the communion.[1] It was thus, indeed, that the poor of the church were fed, showing the substantial nature of the offerings.[2] In some places, also, the custom obtained, to a comparatively late period, to call in the school children and feed them on the surplus; and thus, occasionally, it might reach the unbaptized, as in a case mentioned by Evagrius, resulting in a miracle.[3] The use thus made of the food remaining must have continued until the ninth century, as we find it forbidden in the False Decretals.[4]

The idea of a celebration of this nature was familiar to all the races from which converts were to be drawn, for propitiatory and eucharistical feasts formed part of the religious institutions of the Hebrews (*Deut.* xiv. 22–9), and the solemn eating of the sacrifice was, throughout Pagandom, the bond which manifested the connection between those who worshipped the same deities. The Izeshne sacrifice of the Mazdeans bears a very remarkable similarity to the form which the Mass assumed in its final development, even to its performance for the benefit of the souls of the dead;[5] and, in fact,

[1] Theoph. Alexandrin. Commonitor. can. vii. (Harduin. I. 1199).

[2] Cyprian de Op. et Eleemos.

[3] Evagrius (Hist. Eccles. Lib. iv. cap. 35), writing during the reign of Justinian, describes this as an old custom in Constantinople. That it was regarded as a religious rite is evident from the miracle referred to. It chanced that a Jewish boy partook of the holy repast, along with his companions, and on his return home mentioned it as an excuse for his delay. The father, who was a glass-maker, transported with rage, cast his son into a glass-furnace, where the child remained for three days unharmed amid the flames, until his mother, who had vainly searched him everywhere, chanced to hear him answering her call. A beautiful woman, he said, had at once appeared to him, covering him with a garment impenetrable to the fire, and supplying him with food when hungry. By order of Justinian the mother and son were baptized, and the father, proving obdurate, was crucified. The same story is related by Nicephorus Callistus (Hist. Eccles. Lib. xvii. cap. 18) and by Gregory of Tours (Mirac. Lib. i. cap. 10). The custom which gave rise to it was likewise followed in the West, as appears from Concil. Matiscon. II. ann. 585 can. 6.

[4] Pseudo-Clement. Epist. ii.

[5] Shayast-la-Shayast, ch. xvii. (West's Translation, pp. 284, 383.)

from China to Mexico, the prevalence of the custom is so remarkably uniform as to lead even the most orthodox to the theory that all religions are but branches of one primeval and universal form of belief.[1] That the eucharistic feast should come to be regarded as the symbolic bond of union between believers, and of their communion with God, was therefore inevitable, and every one professing Christianity was required to partake whenever he attended the meetings for worship.[2] These meetings, in some churches, were held regularly twice a day, and it was the duty of the faithful to be always present;[3] while in others a daily service only was required, in others weekly, and in others again several times a week.[4] Not satisfied with the frequent opportunities thus afforded of participating in the communion, pious souls would carry the Eucharist home with them, that they might enjoy its benefits at all times;[5] and so universal was its administration that infants of the tenderest years, as soon as they received baptism, were expected to be brought regularly to the altar, where they joined unconsciously in the sacred mysteries,[6] the belief of the

[1] See Henrion, Hist. Ecclésiastique, T. VII. pp. 1239 sqq., where the reader may find a very curious defence of this theory, illustrated with abundant proof from the religious ceremonies of many races. Coulanges (La Cité Antique, Liv. III. ch. 1) has well developed the significance attaching to partaking of religious repasts and of food prepared on the altar, in Greece and Rome.

[2] Canon. Apostol. x.—Concil. Antioch. ann. 341 can. 2.

[3] Constit. Apostol. Lib. II. cap. xl., lxiii.

[4] Cyprian de Orat. Domin. cap. 18.—Justin. Martyr. Apol. II.—Tertull. de Orat. cap. 19.

[5] Tertull. de Uxor. Lib. II. cap. v.—Cyprian. de Spectac. cap. 5.

[6] Cyprian. de Lapsis cap. 25.—The veneration which already was bestowed on the Eucharist is manifested by this passage. During the Decian persecution, a female infant was carried by her nurse before the magistrates, and made to eat of the pagan sacrificial meats. Her parents, ignorant of the fact, subsequently took her to church, and when the deacon placed the holy cup to her lips, she resisted violently. Forced at length to swallow a mouthful of the sacred wine, she immediately threw it up. As Cyprian remarks, the Eucharist could not remain in her violated mouth and body; the draught, sanctified by the blood of the Lord, burst from her polluted stomach.

church being, as expressly asserted by Innocent I. and Pelagius I., that without it they forfeited their claim to eternal life.[1] An abuse, indeed, at one time arose by which the holy symbol was even given to the dead—a profanation sharply reproved by the third council of Carthage in 397.[2]

Thus, as participation in the Lord's Supper became universal, perpetual, and obligatory, it naturally soon was recognized not only as the bond of union, but as the test of fellowship among believers. When the expected Second Advent did not come, and when the necessity for permanent organization and discipline grew apparent, the Eucharist thus inevitably assumed a fresh importance as a means of efficiently enforcing subordination and obedience. As a society of voluntary cohesion, the church had of course the right to expel a refractory member; and if it had doubted its power, it had sufficient precedent to justify the assumption. Among the Jews, three degrees of separation from the synagogue were practised—*niddui*, *cherem*, and *summâthâ*—to coerce contumacious offenders, imposing segregation and disabilities very similar to those which we will see hereafter adopted by the church, when it acquired secular as well as spiritual authority.[3] Among the Gauls, also, the

[1] Innocent PP. I. Epist. xxx. cap. 5.—Gelasii PP. I. Epist. vii. It is interesting to observe that this belief was anathematized as heresy by the council of Trent, but it forbore to condemn the practice of the ancient church (Sess. xxi. De Commun. cap. 17. can. 4). Gregory XIII., however, soon after, in 1572, expressed great surprise on learning that the custom was preserved in some of the German Churches, and strictly prohibited it, under threats of punishment. (Dalham Concil. Salisburg. p. 577.) In the fifteenth century, among the Ethiopic Christians, male infants were baptized on the 48th day and females on the 88th, and the Eucharist was at once administered to them in the form of a crumb of bread.—Osorii de Rebus Emmanuelis Reg. Lusit. Lib. ix. (Colon. 1584, p. 304 *b*).

[2] Concil. Carthag. III. can. 6.

[3] Buxtorfi Lexicon Chaldaicum, p. 827.—Hippolytus (Refutation of Heresies, Bk. ix. chap. xix.) asserts that among the Essenes excommunicates sometimes perished of starvation, being refused all aid by their fellows, and at the same time being forbidden by their tenets from partaking of unblessed food.

theocratic government of the Druids was maintained by an expedient almost precisely similar in its details and application.[1]

The standard of morality erected by Christ was so different from that of the hideous society in which the infant church was nurtured, that a large portion of the offences of its untrained converts could be restrained only by its own action, even had it been willing to see its members brought before the heathen tribunals for trial. Not only, as we have seen in the previous essay, did the church seek by every means to keep them from appealing to the courts in civil cases, but when they were accused and condemned for criminal actions it sedulously held aloof and abandoned them.[2] It was thus obliged to exercise a close supervision over the lives of its followers to repress the sins which, though heinous in the eyes of the devout children of the Redeemer, were venial weaknesses, or even praiseworthy deeds, in the opinion of the heathen. There was an ample field for the exercise of its sternest vigilance, for, in the incurable corruption of social life under the empire, neither regeneration by the waters of baptism, nor the purifying influence of occasional persecution, could preserve the church from constant and wide-spread contamination. It was not merely the Christian ideal of purity of character and abstinence from evil thoughts and desires that was lacking, for even the grossest sins and crimes were not infrequent. Even in the second century, Irenæus consoles himself with the conviction that the secret evil deeds of those who held high position in the church would receive their due reward hereafter;[3] and when a fraudulent banker like St. Calixtus I. could be elevated to the bishopric of Rome, there could not be any very elevated standard of morality in the Christian society of the Eternal City.[4] After the Decian persecution, Cyprian lifts up his

[1] Cæsar. de Bell. Gall. Lib. VI. cap. 13.

[2] Constit. Apostol. Lib. V. cap. iii.

[3] Irenæi contra Hæres. Lib. IV. cap. XXVI. § 3.

[4] Hippolytus, Refutation of Heresies, Bk. IX. chap. 7.

voice to proclaim that the sufferings of the church were the just penalty of its ineradicable corruption. Bishops neglected their sacred functions to devote themselves to the accumulation of wealth wrung from the poor, while possessions gained by fraud were increased by merciless usury. As for the priesthood, it had neither purity of faith, charity of works, nor discipline of morals; while the laity were given over to avarice and cheating, blasphemy and slander.[1] Even the terrible purification administered by Decius was ineffectual, for, ten years later, an epistle of Gregory Thaumaturgus defines the penance appropriate for the crimes committed by the faithful during an irruption of the Goths into Pontus. Many Christians had joined the barbarians, and had aided them in their ravages, guiding them through the country, pointing out dwellings to be sacked, and murdering, plundering, and ravishing. Even after the raid, unfortunate captives escaping and endeavoring to return to their homes were seized by Christians and held as slaves, while others obtained possession of their neighbors' property, and refused to restore it.[2]

Human nature, even among the early Christians, thus evidently fell far short of ideal perfection, and when tried by the standard of the Gospel its shortcomings demanded the most earnest efforts at reform. Nor were the offences those against ordinary morality only, for the growth of Christian theology speedily added a new and interminable class of sins in the deviations of faith which were regarded as the most unpardonable of crimes against God. The church thus had ample work to do, and was obliged to provide for its systematic performance. For this it had full opportunity. Ignored or persecuted by the civil power, and forming an independent body in the social order of the empire, it enjoyed entire autonomy within its own borders. Each local church could frame its own laws, from the application of which there was no appeal to

[1] Cyprian. de Lapsis cap. 6.

[2] Greg. Thaumat. Epist. can. 6, 7, 8, 9. (Harduin. I. 194.)

any external or superior power; and thus there gradually grew up a code, of which the administration fell of necessity into the hands of the elders, presbyters, or priests of the individual congregations, or the overseers, episcopi, or bishops of the towns. The penalties provided for in this code were of course merely moral or spiritual; but to the enthusiastic Christian these were far more dreadful than the sternest inflictions of the temporal tribunals. He who failed in his observance of the rules of the church was admonished and reproved, or suspended from communion for a period proportioned to the gravity of his offence. Repentance and amendment procured his restoration, but the hardened sinner who denied the authority of the church and persisted in his evil courses was cut off and ejected.

To the sincere Christian no fate could be more deplorable than to be cast out of fellowship, to be pronounced unworthy of participation in the sacrifice of the Lord's table, to be deprived of the solace of intercommunion with kindred souls, and to be shunned as one who had renounced or forfeited his share in the redemption of mankind. To this it speedily came. As joining in communion was the symbol of Christian fellowship and unity, so the church, by withholding the Eucharist, set upon the sinner the stigma of condemnation which separated him from the righteous, which made him an outcast among the faithful, and which, by expelling him from the church, consigned him to eternal perdition.

How soon the ministers of God conceived that they wielded this awful power to determine the destiny of immortal souls it would be difficult to assert with positiveness. It was not until long afterwards that the naked and abhorrent sentence of direct damnation came to be customary; but that such was the effect of the deprivation of communion on the unrepentant sinner was assumed and believed at a comparatively early period. The heretic who paltered with the faith consigned himself to hell; but it was the church, through its ministers, which deprived the unrepentant sinner of his share of eternal life in heaven. In either case, outside of the pale there was

no salvation. At least as early as the time of Cyprian, the church had thus interposed itself between God and man, and the doctrine was recognized that he who was not in communion was an enemy of Christ and could claim no share in the Atonement. Unless the church was his mother, he could not call God his father, and it was as idle to expect salvation out of the church as to look for safety in the Deluge except in the ark of Noah.[1] Implicit submission to those who were clothed with this tremendous authority was the only means of salvation. As under the circumcision of the flesh, says Cyprian, those who disobeyed the priests and judges were put to death (*Deut.* XVII. 12), now that we have the circumcision of the spirit, the proud and contumacious are spiritually killed by ejection from the church. For there is no life or salvation out of the church, and the Scripture warns us that the disobedient shall perish who will not yield to wholesome precepts (*Prov.* XV. 12, 10). To save them from this awful fate, they should be affectionately entreated before ejection, but if they will not listen, it is for us to do the work commanded of us by God.[2]

A little later than Cyprian, the Apostolic Constitutions develop the same theory. He who is cast out of the church by its duly constituted ministers is deprived of the glory of eternal life; in this world he is shunned by the good, and God has already judged him for the next.[3] A century later, St. John Chrysostom, in deprecating the freedom with which this fearful power was used on the most trivial occasions, does not admit that its efficiency was diminished by its abuse. The man who was anathematized was given up to the devil. Abandoned by Christ, he had no hope of salvation; and Chrysostom asks his hearers if they think it a light matter thus to take upon themselves the office of Christ, and to pass a sentence of such awful

[1] Cyprian. de Unitate Ecclesiæ. This bitter exclusion was directed against the Novatians, whose only heresy consisted in refusing to receive back those who had lapsed in the Decian persecution.

[2] Ejusd. Epist. IV. cap. 4, 5, ad Pomponium (Ed. Oxon.).

[3] Constit. Apostol. Lib. II. cap. 51.

import before the time and the coming of the judge.[1] St. Jerome declares that the priesthood hold the keys of Heaven and judge in advance of the day of judgment. "If I sin," he exclaims, "the priest can deliver me unto Satan for the destruction of the flesh, that the soul may be saved;" and, after alluding to the Mosaic law, he proceeds: "Now the disobedient is killed with the spiritual sword, or, cast out of the church, is torn to pieces by ravening demons."[2] St. Augustine can find no equivalent for the dread results of excommunication save the expulsion of Adam from Paradise;[3] and in 428, Pope Celestin I., in deprecating the withholding of the sacraments from the dying sinner, as commanded by numerous canons, exclaims that their denial is the denial of salvation.[4]

While the spiritual effects of expulsion from communion were so awful, the temporal punishment of the sinner was by no means neglected. Before the church had been united with the state under the Christian Emperors, it of course had no power of inflicting legal penalties or disabilities on its recalcitrant children, but it had nevertheless the opportunity of visiting them with annoyances hardly less severe. Principal among these was segregation—cutting off the excommunicate from all intercourse with his fellow beings—a penalty which, as we shall see hereafter, added enormously to the authority of the church during the middle ages. It would seem to be naturally derived from a similar regulation in the Jewish rules with regard to excommunicates, and among the apostles this would be heightened by the exclusiveness which, under the Jewish law, forbade companionship with the Gentile. As St. Peter said to Cornelius (*Acts* x. 28): "Ye know that it is an unlawful thing for a man that is a Jew to keep company or come unto one of another nation," and the excommunicate being regarded

[1] Chrysost. Homil. de Anathemat. cap. 2, 3.
[2] Hieron. Epist. XIV. ad Heliodor. cap. 8.
[3] Augustin. de Genesi ad Litteram Lib. XI. cap. 40.
[4] Cœlest. PP. I. Epist. II. cap. 2. (Harduin. I. 1259.)

as a heathen might naturally be held as coming under the same rule by those who were trained in Jewish traditions. Such an expedient, therefore, suggested itself as a matter of course to St. Paul, as expressed in a text already quoted. The command was a positive one, and was easily interpreted to extend to all who had fallen under the ban and had been suspended from communion. In the earliest record of church customs that has reached us, the Apostolic Canons, there is a provision that any one praying with an excommunicate in his own house shall be excommunicated.[1] This would seem to cut off even those who were penitently striving to reconcile themselves with an offended God, and its harshness is condemned by the more extended code known as the Apostolic Constitutions, which warns the bishops not to avoid the guilty, nor to prohibit them from the Lord's prayer, nor from living with the faithful, for Christ did not shun publicans and sinners, nor hesitate to take food with them. Therefore, it proceeds, should you live habitually with those who are cut off, helping, comforting, and consoling them, lest they lapse still farther into sin.[2] While thus tender of the penitent, however, it orders that the impenitent and the heretic be cut off without mercy, and that the faithful be instructed to avoid not only prayers but even speech with them.[3] St. Paul had written "A man that is an heretic after the first and second admonition avoid" (*Titus* III. 10), and Irenæus asserts that the Apostles carried out this regulations most rigidly.[4] Stephen I., therefore, had warrant for his harshness when he refused to confer with the Eastern bishops deputed by their brethren in 256 to settle the quarrel between Rome and the East on the subject of the rebaptism of heretics, and when he moreover ordered that no one should receive them to hospitality. He had cut them off from his communion, but

[1] Canon. Apostol. XI. Cf. Concil. Antioch. can. 2.

[2] Constit. Apostol. Lib. II. cap. 44.

[3] Ibid. loc. cit.; Lib. VI. cap. 18, 26.

[4] Irenæi contra Hæres. Lib. III. cap. 3.—Euseb. Hist. Eccles. Lib. IV. cap. 14.

St. Firmilian of Cappadocia shows by his bitter complaints of these proceedings that the action adopted by Stephen was, to say the least, a most unusual one.[1]

Stephen's example was not immediately followed, for the frequent prohibitions to allow excommunicates to receive the communion, which occur in the canons of the fourth century, prove that the more comprehensive punishment of excluding them from all intercourse could not have been enforced. A distinction drawn by the fourth council of Carthage in 398 shows the revival of the practice in a special matter. In one canon it expresses the received rule that any one communing or praying with an excommunicate shall be excommunicated, while in another it forbids all intercourse with widows who marry after taking vows of continence.[2] Two years later a more general application of the principle is developed by the first council of Toledo, which suspends from communion any one who knowingly holds intercourse with a man who is sus pended; and, in the case of nuns who suffer themselves to be seduced, both the guilty parties, after separation, are condemned to ten years of penance, and excommunication is threatened against all who may associate with them until they are admitted to prayer.[3] Contemporary with this is St. Augustine's treatise against the Donatist Parmenianus, in which he speaks of this complete segregation as the established rule of the church, in the case of excommunicates, but prudently counsels that such a sentence be pronounced only against those who are friendless, and who therefore will not be likely to excite disturbance or to create schism.[4] At a few years' later date we have the text of an excommunication pronounced by Synesius, Bishop of Ptolemaïs, against Andronicus, Governor of the Pentapolis, in which he formally cuts off the guilty man from all intercourse with the faithful: "For this blasphemy

[1] Cypriani Epist. 75 (Ed. Oxon.).

[2] Statut. Eccles. Antiq. can. 73, 104.

[3] Concil. Toletan. I. ann. 400 can. 15, 16.

[4] Augustin. contra Epist. Parmenian. Lib. III. cap. 2 No. 13.

the church of Ptolemaïs gives notice to her sisters in all lands: Let no temple of God be open to Andronicus, Thoas and his followers. Let every holy house and cloister be closed to them. There is no place in Paradise for the Devil, and if he steals in let him be expelled. I command all citizens and magistrates that they be with him neither under the same roof nor at the same table; and all priests that they neither salute him while living, nor grant him funeral service when dead."[1] Very similar to this is the sentence pronounced at the council of Constantinople in 448 against the Archimandrite Eutyches for his heretical notions as to the nature of Christ: "Sighing and weeping for his utter perdition, we decree, by our Lord Jesus Christ whom he has blasphemed, that he be deprived of all priestly functions, and of the government of his monastery; and all who, knowing this, shall converse with him and consort with him shall be punished with the same excommunication."[2]

By this time, therefore, we may conclude that segregation was fairly established as one of the penalties of disobedience to the church. All excommunicates, however, were not exposed to it. The sinner who repented of his misdeeds and sought absolution was required to pass through a course of probation, varying in length and severity with the gravity of his offence, before he was again received to communion, and during this time of penance he was not interdicted from intercourse with the faithful. If, however, his patience gave way under the long and weary trial, which, as we shall see hereafter, was by no means unlikely, and he ventured to disregard the strict rules imposed on him, the proceedings of various councils held about this time show that he was then to be rigorously segregated, and all Christians were strictly forbidden from associating with him in any manner.[3] He was a pariah, cut off

[1] Synesii Epist. 58. [2] Synod. Chalced. Act. 1. (Harduin. II. 167).

[3] Concil. Arelatens. II. ann. 441 can. 49.—Synod. II. S. Patric, c. ann. 460 can. 1, 2, 4.—Concil. Turon. I. ann. 460 can. 8.—Concil. Venetic. ann. 465 can. 3.

from human society; and though, during the earlier times when the Christians were few and scattered, this might have been but a light infliction on the carnal and worldly-minded, yet, as the religionists multiplied, it became more and more severe, and when paganism was finally overthrown, it was the destruction of the victim's life and prospects. In this world the church ruined his career and excluded him from the company of men, as in the next it ejected him from that of angels, so that life here and hereafter was equally within its control.[1]

Thus terrible was the fate of the recalcitrant who was too proud to submit, or too weak to endure the penalties of his transgression; and in time he who earnestly sought reconciliation and pardon for wrong-doing found his lot scarcely more endurable.

In the earlier ages of the church, the penance imposed upon the repentant sinner was a very simple matter. Cyprian was somewhat scandalized to see those who had lapsed in the Decian persecution readmitted to communion with little or no probation, and he remonstrated energetically but vainly against it, though even he was willing to welcome them back with a very slight amount of penance.[2] In the Apostolic Constitutions, likewise, the bishop is directed to smooth the path of the sinner, and after a few weeks of fasting, to test the sincerity of his repentance, the fold is again to be thrown open to him, though the impenitent is to be cut off without mercy.[3] About the same period Gregory Thaumaturgus describes for us this process of penitence, which was divided into four stages. The first, or *fletus*, was the period of weeping, when the penitent stood outside the church door, weeping and begging the faithful as they entered to pray

[1] In the sixth century, however, Gildas seems to argue against the propriety of segregating the excommunicate. — Abedoc et Ethelvolfi canon. Lib. XXXIX. cap. 4. (Haddan and Stubbs, Councils of Gr. Britain, I. 108).

[2] Cyprian. Epist. 15, 16, 17, 18, 19, 20, 23, 24, 25 (Ed. Oxon.).

[3] Constit. Apostol. Lib. II. cap. 19, 45.

for him. During the second, *auditio*, he was allowed to stand in the vestibule until the catechumens were dismissed from the congregation. In the third, *subjectio*, he was admitted inside of the church amid the catechumens. The fourth period, *consistentia*, saw him among the faithful and allowed to remain during the services, but not to partake of the sacrament.[1]

Throughout this period, however, there had been zealous puritans who were not disposed to pardon so easily. Montanus taught that there was no power in the church to forgive atrocious sins, and Novatianus held that the Decian apostates were not readmissible into the fold. They refused even death-bed communion to those who had lapsed, and their followers, under the names of Montanists, Cathari, and Novatians, formed sects of heretics which lasted for centuries. So, after the final persecution of Maxentius, the Donatists for more than a hundred years plunged the African church into confusion because Felix of Aptungis was allowed to perform the episcopal functions after he had betrayed the sacred books and vessels of his church to the heathen. These heresies were stoutly resisted by the orthodox, but their rise and growth are the evidence of the tendency which existed in the minds of all the faithful to meet increasing corruption by sterner measures of repression, and by lodging greater power in the hands of the hierarchy. The church was fast losing the boundless charity which it had received from the Redeemer, and was becoming more and more an organization of worldly forces, wherein fear was recognized as a much more potent element than love in enforcing submission.

[1] Gregor. Thaumat. Epist. can. xi. (Harduin. I. 194). Jerome describes for us the appearance of the noble Roman matron Fabiola, while undergoing voluntarily the first stage of penitence—"Saccum indueret, ut errorem publice fateretur : et tota urbe spectante Romana ante diem Paschæ in basilica quondam Laterani. . . . . staret in ordine pœnitentium, episcopo, presbyteris et omni populo collachrymantibus, sparsum crinem, ora lurida, squalidas manus, sordida colla, submitteret. Quæ peccata fletus iste non purget?"—Epist. 77 ad Oceanum.

So St. Ambrose—"Volo veniam reus speret, petat eam lachrymis, petat gemitibus, petat populi toti gemitibus, ut ignoscatur obsecret."—De Pœnitent. Lib. I. cap. 16.

Thus, within half a century after the Decian apostates had been received back into the bosom of the church with scarce a question, and Novatianus had been declared a heretic for refusing to join in communion with them, the orthodox council of Elvira decrees that to offer sacrifice to an idol after receiving baptism is a sin which no expiation can cleanse, and the sinner is denied reconciliation even upon his death-bed.[1] Twenty years later the council of Nicæa relaxed somewhat from this severity, and parades its clemency in limiting the penance of such backsliders to three years passed in the second stage of penitence, six years in the third, and two in the fourth, after the contrite and humble performance of which the guilty one was at last restored to communion.[2]

Having once entered into this career, the church could not stop, and as its membership increased in numbers and deteriorated in righteousness, its functions as a law-giver became more and more active. A large portion of the canons of its councils are devoted to establishing a criminal code, which existed side by side with the imperial jurisprudence, and which, while providing for numberless cases which were not noticed in the civil law, created duplicate punishments for many offences which were likewise under the cognizance of the secular tribunals. These canons, however, were mostly local and tentative in their character, varying greatly with time and place; and though ample materials exist for forming a tolerably complete summary of their leading features, yet space will hardly permit the consideration of more than two important points which bear directly upon the future development of our subject—the disabilities imposed upon penitents and excommunicates, and the questions connected with death-bed absolution and communion.

We have just seen that for apostates the council of Nicæa imposed a penitence of eleven years—increased to twelve by a Roman synod in 188.[3] Long as this term may seem, it was by

[1] Concil. Eliberit. ann. 305 can. 1.

[2] Concil. Nicæn. can. xi.

[3] Felicis PP. III. Epist. vii.

no means unusual, for the length was proportioned to the grade of offence committed, and for heinous sins there are various canons which deny reconciliation during a lifetime, and only permit it on the death-bed.[1] This course of penitence was by no means a mere deprivation of spiritual privileges, for the church had to deal for the most part with natures by far too hardened to be broken into subjection by penalties so light. In fact, the council of Vannes, in 465, gives us a curious illustration of the decline of reverence for the awful privilege of the Eucharist in providing for drunken ecclesiastics the alternative of corporal punishment or thirty days' suspension from communion.[2] Evidently something more substantial was required, nor was there much scruple in finding it. Fasting, as we have seen, formed part of the punishment as early at least as the date of the Apostolic Constitutions, and as the church obtained influence over secular life it commenced to interfere with the worldly pursuits and privileges of its penitents. Thus they were deprived of the right of acting as prosecutors or of appearing as witnesses;[3] and guilty prelates took advantage of this by excommunicating their clergy, to shield themselves from prosecution, so that it became necessary to provide a sort of temporary absolution in such cases to procure testimony against bishops who had thus disabled those who could convict them.[4] Not only was marriage prohibited during penitence,[5] but even all connubial intercourse between husband and wife,[6] so that, with profound respect for the rights of both parties, neither could be admitted to penitence without the consent of the other.[7] The penitent, moreover, was forbidden to bring suit—he was

[1] Concil. Eliberit. can. 3, 10, 13.—Concil. Ancyrens. can. 21.

[2] Concil. Venetic. ann. 465 can. 13.

[3] Concil. Constantinop. I. ann. 381 can. 6. — Cod. Eccles. African. can. 128.

[4] See the case of Ibas of Edessa, ap. Chr. Lupi Append. ad Ephesin. Latrocin. (Opp. II. 223).

[5] Concil. Arelatens. II. ann. 441 can. 21.

[6] Siricii PP. Epist. I. cap. v. (Harduin. I. 848).

[7] Concil. Arelatens. II. can. 22.

not allowed the privilege of refusing to appear as defendant, but he must not act as plaintiff. This of course cut him off from all legal defence of his civil rights; but in cases of peculiar hardship Leo I. astutely suggested that he might be allowed to appeal to the ecclesiastical tribunals.[1] He was likewise prohibited from rendering military service, and it was even doubtful whether he could transact business. Leo I. hesitates to enforce this latter regulation, but suggests that the penitent had much better suffer loss than risk the sin that is almost inseparable from trade.[2] The two or three, or ten or twelve years spent in penance were evidently not a pleasant portion of a sinner's life, and as the penance had to be applied for voluntarily, it is no wonder that an alternative so fearful as expulsion from human society was found necessary as the alternative to coerce the recalcitrant.

In many respects, moreover, the penitent when readmitted to communion was not restored to his original condition. When the church had once condemned a man, the mark set upon his brow was indelible, and no subsequent repentance or expiation could wholly efface it. God might forgive him wholly and freely, but God's ministers were not so placable. Any one, whether clerk or layman, who had once been forced to pass through a course of penitence, became thereafter ineligible to holy orders, and a bishop knowingly ordaining such a man forfeited the power of ordination.[3] He was likewise, if belonging to the military profession, forbidden to return to it;[4] and the inquiries made of Leo I., by Rusticus of Narbonne, show that doubts were even entertained whether it was lawful for an absolved penitent to engage in business or to marry.[5]

[1] Leon. PP. I. Epist. CLXVII. Inquis. 10.

[2] Ibid. Inquis. 11, 12.

[3] Siricii PP. I. Epist. 1 cap. xiv.—Concil. Roman. ann. 465 can. 3.—Gelasii PP. I. Epist. v. cap. iii.—Statut. Eccles. Antiq. can. 68.

[4] Leon. PP. I. Epist. CLXVII. Inquis. 12.

[5] Ibid. Inquis. 11, 13.—From a passage in this it is evident that penitence was sometimes assumed in times of danger or calamity, as an act

On this latter point Leo prudently replies that it would be better for a man who had assumed to undergo penitence to remain for life chaste in mind and body; but that, if he fears that youthful ardor may lead him into sin, and therefore takes a wife as a precaution, the transgression may be regarded as venial. All this was doubtless intended for the health of the souls of the faithful, but its efficacy was quite as great in extending the authority of those who had so absolute a control over the lives of their fellow-creatures.

The questions connected with the granting or withholding of death-bed communion involved considerations of more tremendous import. When man assumes to place himself between his Creator and his fellow-beings, and to wield, without appeal, supreme authority over eternal life and death, the contrast between his finite intelligence, obscured by human passions, and the infinite power to which he aspires, would be ludicrous if it were not revolting. To make the salvation of a living soul dependent upon the ministrations of a fallible fellow-creature, to be withheld at his caprice, or lost through his malevolence, or ignorance, or supineness, would seem to be an imposture too gross for the most fatuous credulity; and yet it has been for fifteen hundred years, and still is, the belief of a majority of those who profess faith in their Redeemer, and in the doctrine of the Atonement. When, in enlightened France, within a few years, we have seen a priest on his trial for murder, because in his ignorant zeal he performed the Cæsarean operation, and thus destroyed both mother and child in the effort to save the unborn babe by the water of baptism, we can hardly be surprised that in former ages doctrines so monstrous found ready acceptance in the minds of all.

The good fathers of the council of Elvira had a stiff-necked generation to deal with, and they doubtless felt that, in their

of propitiation, in the same way that pilgrimages, and other pious performances, were vowed in subsequent ages.

zeal for the enforcement of morality, they were merely exercising, under the influence of the Holy Spirit, the power intrusted to them by Christ, yet they designated no less than fourteen offences for which the transgressor was to be cut off from all hope of salvation by refusing him communion even upon his death-bed. Jesus had pardoned the thief upon the cross, and the Apostle had said, "Be not overcome of evil, but overcome evil with good . . . . love is the fulfilling of the law" (*Romans* XII. 21, XIII. 10), but those who assumed to speak in His name, and to act as His direct agents, proclaimed that no amount of repentance, no subsequent reformation and life-long remorse could wash out sin, and merit salvation for a woman who had left her husband and married another; or for a priest who did not separate himself from an adulterous wife; or for a man who brought a false accusation against a bishop or priest, and who failed in his proof.[1] For these and for many kindred offences the sinner was cut off in this world and rejected in the next. Christ had intrusted his ministers with the power to bind and to loose on earth and in heaven, and they exercised this authority by giving or withholding the sacraments, of which they possessed the exclusive control; nor was there any possible tribunal to which an appeal could be carried against their decisions, for they spoke in the name and with the assent of the supreme and omnipotent God.

That men believing themselves armed with so tremendous and fearful a power should exercise it so recklessly, seems incredible, and yet unfortunately the facts exist to show beyond the possibility of doubt that those who so acted were possessed of that belief. The man who died excommunicate and unreconciled was damned beyond the hope of redemption. It is true that if he had been admitted to penitence, and had been zealously seeking to merit forgiveness, and was suddenly cut off by shipwreck or other unforeseen accident at a distance from

[1] Concil. Eliberit. ann 305 can. 1, 6, 7, 8, 12, 13, 17, 18, 63, 64, 65, 66, 70, 71, 72, 73, 75.—Concil. Arelatens. I. ann. 314 can. 22.

priestly aid, then the church indulged in some doubt as to his perdition. He might possibly be saved, but the presumption was against him, and his name might not be included in the prayers of the faithful, for if God had willed his salvation, he would not have been condemned to die afar off from the saving viaticum[1]—though, it is true, some authorities shrank from so cruel a practical application of the principles which all professed.[2] For those not yet reconciled, who expired within reach of ghostly assistance, and who yet failed of the last sacraments, there was therefore no hope; and the extreme severity, such as that of the council of Elvira, which deliberately refused the communion to the despair of the dying sinner, was rebuked by the less rigorous portion of the church, not for assuming a power which did not belong to the ministers of God, but for its unmerciful abuse. In 428 Celestin I. expresses his horror at the impiety of those who coldly refused to grant the entreaties of the dying, and to relieve them of the weight of the sins that would bear them down to hell, thus cruelly killing the soul, and adding a second death to that of the body.[3]

The practice of the church, therefore, was by no means uniform in the exercise of its awful prerogatives. Cyprian mentions that some bishops of his day, as we have seen them subsequently do, refused to allow penitence or a chance of forgiveness to adulterers. He himself considers this contrary to the precepts of Christianity; but at the same time he decides that sinners who have not sought for penance during health, cannot be listened to when the approach of death warns them to prepare for the judgment-seat; for he who has lived

[1] Leon. PP. I. Epist. CLXVII. Inquis. 8.

[2] Thus the fourth council of Carthage, in 398 (can. 79, 81), leaned to the more merciful view of the matter, and the eleventh council of Toledo, in 675, alluding to the conflict of precedent on this point, concluded in favor of reconciliation to the church (Concil. Toletan. XI. can. 12). So also did the Concil. Vasens. I. ann. 442 can. 2.

[3] Cœlest. PP. I. Epist. IV. cap. 2.

without thought of death, is not worthy to be forgiven in death.[1]

This extreme rigor declined somewhat in time, and the great council of Nicæa condemned it by restoring the primitive rule which forbade the viaticum to be denied to any one demanding it on his death-bed.[2] This view became generally adopted, and is laid down by Siricius about the year 385, by the fourth council of Carthage in 398, by Innocent I. in 405, by Leo I. in 452, and by the eleventh council of Toledo in 675.[3] Yet we have just seen that a hundred years after the authoritative declaration of the most venerable first general council, the epistle of Celestin I. shows that its commands continued to be disregarded notwithstanding the efforts made in the interval to abrogate the abuse. The temptation to employ to the utmost a power so absolute over their fellow-men was too much for weak humanity. If God had deigned to share His authority with His creatures, He had not seen fit to accompany the grant with the grace requisite to its proper exercise; and it was, perhaps, some recognition of the awful responsibility attaching to this power, as well as the desire to extend the control of the church beyond the grave, that led to the adoption of the doctrine of Purgatory—an intermediate state of probation, in which the sentence of the condemned could still be revoked, and the deficiencies of the death-bed be made good by prayers or sacrifices offered on earth. An instructive illustration of this is to be found in a story related of himself by Gregory the Great. While he was yet abbot of the monastery of St. Andrew, three pieces of gold were found, belonging to one of his monks, then lying in mortal sickness. So gross a violation of the vow to possess nothing except in common could

[1] Cyprian. Epist. 55 cap. 21, 23 (Ed. Oxon.).

[2] Concil. Nicæn. I. can. 13.—"Etiamnunc lex antiqua regularisque servabitur."

[3] Siricii PP. Epist. I. cap. 5.—Concil. Carthag. IV. ann. 398 can. 76, 77.—Innocent. PP. I. Exsuperio Tolosan. cap. ii.—Leon. PP. I. Epist. CVIII. cap. 4.—Concil. Toletan. XI. ann. 675 can. 12.

not be passed over without exemplary chastisement, and Gregory ordered that all the consolations of religion should be denied to the dying man, and that when dead his corpse should be buried in a dung-hill, without funeral rites. A month after the death of the unhappy wretch he relented, and commanded that for thirty days the sacrifice of the Eucharist should be daily offered for the salvation of the defunct. At the expiration of that time the spirit of the departed appeared to his brother, and stated that he had been in torment until that day, when he had at last been blessed by being admitted to communion. In coldly recording this solemn warning, Gregory seems to manifest no sense of the frightful responsibility attendant on the power of thus regulating at his caprice the salvation or damnation of a human soul.[1]

All men were not so lenient as Gregory, and indeed there were other differences besides those already mentioned as to the employment of these awful prerogatives. The complete reconciliation of the sinner required the sacrament of penitence, including the imposition of hands by a bishop. In the sudden emergency of death it is evident that the episcopal ministration could not always be at hand, giving rise to nice questions as to what was to be done in its absence; yet a canon of the council of Elvira adopted to settle this point shows the con-

[1] Gregor. PP. I. Dialog. Lib. IV. cap. 55.—A similar occurrence is related of Peter the Venerable Abbot of Cluny (Rodulphi Vita Petri Venerab. c. 9—Martene Ampl. Collect. VI. 1196). The Dialogues of Gregory show us the commencement, in his time, of the belief in a definite condition of temporary purgation, accessible to the efforts of the church. After relating various marvellous visions, and other manifestations tending to the establishment of the doctrine, he is asked by his interlocutor why, in these latter times, so much is revealed to man concerning the future life, which had previously been concealed—"Quid est hoc, quæso, quod in his extremis temporibus tam multa de animabus clarescunt quæ ante latuerunt?" To this Gregory can only give the answer, that, as the end of the world was approaching, our nearness to the world to come rendered its manifestations more appreciable (Ibid. cap. 40, 41). This belief in the impending destruction of the earth is elsewhere expressed not infrequently by Gregory.

fusion existing by giving, in the readings of different MSS., instructions diametrically opposite—one of them insisting on the interposition of a bishop, or at all events of his authority, while another directs that a priest, or even a deacon, in cases of necessity, can administer the viaticum to the dying sinner.[1] In this conflict of opinion, we find that the second council of Carthage, in 390, reduces the chances of salvation by directing that the priest appealed to for absolution by a dying sinner in the absence of his bishop shall seek that functionary for orders before granting the request.[2] Fortunately, in the African church of the period, bishops were almost as plentiful as priests were elsewhere; and possibly the practical inconvenience of such a rule in the larger dioceses of Gaul may be the reason why the first council of Orange, in 441, decreed that the imposition of hands was unnecessary for the reconciliation of the dying penitent.[3] Even in the African church the interposition of the bishop could not always have been insisted on, for in 397 the third council of Carthage permits by implication, in cases of pressing necessity, the absolution of a penitent by a priest whose bishop is absent;[4] and in 398 there is a canon providing that when a dying man asks to be admitted to penitence, and the priest on arriving finds him speechless and insensible the evidence of those who heard his request shall be sufficient, and the priest shall open for him the gates of heaven by pouring the Eucharist down his unconscious throat.[5] It would be difficult to conceive a more complete usurpation of the divine right of judgment and pardon.

While this death-bed communion washed off all stain of sin from the soul which sought the judgment-seat of God, and was amply sufficient for the tribunal of heaven, it was remarkable

[1] Concil. Eliberit. can. 32. [2] Concil. Carthag. II. ann. 390 can. 4.

[3] Concil. Arausican. I. ann. 441 can. 3.

[4] Concil. Carthag. III. can. 33.

[5] Concil. Carthag. IV. ann. 398 can. 76. In the eighth century, this proceeding is commanded by Gregory III. (De diversis Crimin. et Remed. cap. xxxi.) and in the eleventh century by Burckhardt (Decret. Lib. XVIII. cap. 10).

in this, that it was insufficient for the tribunal of man, if the soul was so unhappy as to remain on earth. Dying sinners sometimes recovered unexpectedly, and naturally enough supposed that that which had been assumed to be enough for God might be held to satisfy the claims of the ministers of God. In this they were mistaken. The church was not disposed thus to abandon its claims upon its penitents, and nearly all the canons quoted above contain a clause providing that, in case of recovery, full penitence must be performed before the reanimated sinner can be received again into full communion.

Even those who died in the bosom of the church and were dismissed with the saving viaticum were not always safe from a power which extended to the uttermost regions of the world to come. Their peaceful slumbers might be broken by posthumous excommunication, and the Almighty be notified that the zeal of his watchful agents could not rest satisfied with the judgment that He might already have pronounced. It is true that the power to bind and to loose had been delegated only as to things on earth, and so Gelasius I. decided, saying that the church had no authority to determine as to the condition of those who had already passed away, and in 495 a Roman synod confirmed his decision emphatically.[1] Leo I. in 432 had already taken the same position, alleging that, for the dead, God had already passed His judgment, which the church could not subsequently modify.[2] In 401, however, the fifth council of Carthage had decreed that bishops bequeathing their property to heretics or pagans should be anathematized after death;[3] and a hundred and fifty years earlier Cyprian chronicles the decision of a council which deprived of all connection with the church those who in dying should appoint an ecclesiastic to the guardianship of their children. In those days it was a crime to impose secular cares on the ministers of the altar, and Cyprian orders the sentence to be enforced in the

[1] Gelasii PP. I. Epist. 4, 11—Concil. Roman. II.
[2] Leon. PP. I. Epist. 108 cap. 3.
[3] Cod. Eccles. African. can. 81.

case of a certain Geminius Victor who had nominated a priest named Geminius Faustinus as guardian.[1] St. Augustine more than once offered to the Donatists, in the name of the African church, that if they could prove the crimes alleged against Cecilianus, he should be anathematized, though he had been dead a hundred years.[2] Theophilus, Patriarch of Alexandria, actually excommunicated Origen after the latter had been in his grave for two centuries,[3] showing how little dead sinners could rely upon perpetual immunity, and that no statute of limitations ran against the rights of the church, when defended by fearless and persevering ministers. Such excommunications, indeed, must have been of common occurrence, for St. John Chrysostom, about 382, denounces them as an intolerable abuse. He entreats his hearers not to undertake to decide on that which God had already reserved for His own judgment, and assures them that they are preparing for themselves the fires of hell.[4]

The question evidently was a debatable one, with little prospect of positive proof on either side, but the case of Theodore of Mopsuestia settled it, at least for a time, in favor of the largest prerogatives of the church militant. Theodore had been a bishop of the strictest orthodoxy, a supporter of St. Cyril of Alexandria, and a zealous persecutor of the Nestorians both in his writings and his actions. The council of Chalcedon had not doubted his doctrinal correctness, but the progress of theology, in the course of a century or more after his death, developed some heretical tendencies latent in his writings, and the Emperor Justinian resolved on his condemnation. Pope Vigilius did not attempt to defend the heretic, but stoutly maintained that the church had inherited from the Apostles no power to condemn any one whom God had taken to his own

[1] Cyprian. Epist. 1 (Ed. Oxon.).
[2] Augustin. Epist. 185 cap. 1 § 4.—Epist. 141 § 6 (Ed. Benedict.).
[3] Socrat. Hist. Eccles. Lib. VII. cap. 45.
[4] Chrysost. Homil. de Anathemate.

judgment.[1] When a pope and an emperor differed in those days, it was the pope who had to succumb. The fifth general council, held in Constantinople in 553, formally anathematized not only Theodore of Mopsuestia, but also all those who should not join in the anathema;[2] and by personal ill-treatment Vigilius was forced to subscribe his hand to the condemnation.[3] To the Roman mind, these proceedings were somewhat irregular, as conducted in spite of the earnest protests of the Apostolic See, yet Gregory the Great did not hesitate to acknowledge the acts of the council as equal in validity and authority to those of its œcumenic predecessors,[4] and it has always been received as such by the Catholic church. Still, the question of excommunicating the dead was not completely set at rest, but its further discussion belongs to a period later than that which we are at present considering.

The power to inflict a penalty so tremendous in its consequences as excommunication was one not lightly to be exercised by conscientious men; and, in the earlier ages of the church, it was guarded and limited by certain prerequisite formalities. The Apostolic Constitutions strenuously urge upon bishops the utmost moderation and self-command in their dealings with offenders. Every resource of fatherly exhortation and brotherly love and kindness is to be exhausted in the effort to bring the sinner to repentance before recourse is had to the censures of the church.[5] Even then there is to be no condemnation without the fullest investigation and the evidence of two or three witnesses, irreproachable in character and not suspected of animosity towards the accused. The bishop is to have his priests and deacons as assessors; the evidence is to be carefully sifted, and, if the charge is not sustained, the ac-

[1] Vigilii Constit. de Tribus Capitulis.—Cf. Facundi Episc. Hermaniens. Epist. in Defens. Trium Capit.

[2] Concil. Constantinop. II. cap. 12.—Cf. Collat. viii.

[3] Ibid. Collat. vii. [4] Gregor. PP. I. Regist. Lib. I. Epist. 25.

[5] Constit. Apostol. Lib. II. cap. 23.

cuser is to be punished as a calumniator. After a careful and formal trial, the guilty man is to be again entreated in secret to repent, and, if he still hardens his heart, the sentence is at length to be reluctantly pronounced in the presence of two or three witnesses. The punishment to be inflicted is proportioned to the magnitude of the offence, and only in extreme cases is excommunication allowed. Even then, if the offender repents, he is to be welcomed back with as much eagerness as a new convert would be sought for among the heathen.[1]

In theory, at least, this continued to be the rule of the church. A trial with not less than two witnesses was held to be necessary. The third council of Carthage, in 397, decreed that no ecclesiastic should be suspended from communion unless he disobeyed for two months a summons to trial before his superior. If he appeared neither there nor before the annual synod to have his cause investigated, he was held to be self-condemned.[2] The fifth council, in 401, modified this to some extent, in deference to a custom by which churchmen were sometimes suspended for causes kept secret, either for their own reputation or for that of the church, and in such cases they could demand a trial within a year, failing in which they forfeited their right to be heard.[3] About the same period, St. Augustine declares that no one could be excommunicated except for crime, either voluntarily confessed or proved in a secular or ecclesiastical court;[4] and this confession had to be public, for in 419 the seventh council of Carthage declared that if a bishop refused communion on account of a crime revealed to him in confession, and the excommunicate denied it, the other bishops should not regard the sentence, but should withhold communion from him who had pronounced it, to teach him not to punish for that which he could not prove by evi-

[1] Constit. Apostol. Lib. II. cap. 24, 41, 42, 47, 51, 52, 53, 54, 55, 56.

[2] Concil. Carthag. III. can. 7. 8.

[3] Concil. Carthag. V. can. 12.

[4] Augustin. Serm. 351 § 10 (Ed. Benedict.). Cf. Innocent. PP. I. Epist. VI. § 10.

dence.[1] The council of Vaison, in 442, was not quite so strict, and permitted, in such cases, the bishop to decline joining in excommunion with the sinner, but allowed the latter to enjoy communion with all the rest of the faithful.[2] The council of Nicæa, moreover, had provided an additional safeguard, by ordering a semi-annual synod of all the bishops of each province, where all cases of excommunication were to be examined and reviewed, if found justifiable—thus giving to the condemned a court of appeal and revision.[3]

As the proceeding thus assumed the form of a regular judicial process, other limitations and formalities necessarily arose which protected the accused. Both the fourth council of Carthage and St. Augustine declare that no sentence could be pronounced in the absence of the culprit, and the judge or bishop violating this rule was threatened with prosecution[4]—though of course, as we have just seen, this did not hold good in cases of contumacy, when the accused refused to appear. This rule was emphatically enforced by the council of Chalcedon, when Ibas, Metropolitan of Edessa, complained that he had been excommunicated in his absence by the Robber Synod of Ephesus, and the assembled fathers promptly exclaimed that all proceedings in the absence of the accused were void.[5] They had already proclaimed this general principle still more forcibly when Eustathius of Berytus informed them that he had been excommunicated by a synod recently held in Constantinople, for resisting the division of his province arranged in favor of Photius of Tyre. "No one can condemn the absent," they answered, and Eustathius was reinstated forthwith.[6]

Another approximation to established legal proceedings, of

[1] Cod. Eccles. African. can. 132, 133.

[2] Concil. Vasensis I. ann. 442 can. 8. [3] Concil. Nicæn. I. can. 5.

[4] Concil. Carthag. IV. ann. 398 can. 30.—Augustin. Epist. 43 cap. 3 § 11.

[5] Concil. Chalcedon. act. x. (Harduin. II. 507).

[6] Ejusd. act. iv. (Ibid. p. 439).

much value to the accused, was the adoption of the *lex talionis*, which provided for an unsuccessful accuser the same penalty as that to which he had exposed the accused. Under the Roman law, any one bringing an accusation was required to inscribe himself, and run the risk, in case of failure, of undergoing the punishment of the crime charged in his indictment. This naturally found its way into ecclesiastical jurisprudence. Already, in the Apostolic Constitutions, it is provided that an accuser failing to prove his case shall be punished as a calumniator: he is to be ejected from the congregation as a homicide; if repentant, he may be readmitted after long fasting, and pledging himself not to repeat the offence; and if guilty a second time, he is to be cut off without mercy.[1] The spirit thus manifested came naturally, in process of time, to assume the legal form of the *talio*, and though this does not seem to have been often enforced, it was nevertheless kept in view in formal prosecutions. Thus, in 448, when Eutyches was first accused of heresy in the synod of Constantinople, the prosecutor, Eusebius of Dorylæum, manifested great anxiety in the debate lest the charge should fail, and he be involved in the fate which he expected for Eutyches—deposition and banishment to the great Oasis of Egypt, which was the customary place of relegation for troublesome ecclesiastics. So, in the next year, at the Robber Synod of Ephesus, the monks of Eutyches make formal complaint of their sufferings arising from the condemnation of their archimandrite, and demand that the *talio* be enforced against the Patriarch Flavianus for bringing it about.[2] It is true that Flavianus and Eusebius were condemned not for this but for presumed Nestorianism, yet at the council of Chalcedon we see the process rigorously adopted, when the accusers of Dioscorus of Alexandria were not admitted to a hearing until they had formally inscribed themselves.[3]

[1] Constit. Apostol. Lib. II. cap. 47, 54.

[2] Concil. Chalced. Act. I. (Harduin. II. 234–5).

[3] Concil. Chalced. Act. III. (Ibid. pp. 322–6).

Rules like these could be enforced in the political warfare between great sections of the church, where the prize at stake was supremacy, and a defeated aggressor was exposed to all that could increase or confirm the triumph of his opponent. In the innumerable details of daily life, however, such equitable provisions proved flimsy protection against the showers of excommunications by which personal interests were to be gratified, or the purity of faith preserved. It is true that those efficient instruments of priestly tyranny in mediæval and modern times—the *ex certa scientia*, the *ex informata conscientia*, and more than all, the excommunication *ipso facto*, or *latæ sententiæ*—had not yet been invented; but their advent was foreshadowed by a remark of St. Augustine, that the discipline of the church could always be administered when a crime was notorious, and the criminal not powerful enough to cause risk of dissension or schism.[1] To admit such a practice was an ominous abandonment of all the principles which insured impartial justice to the friendless and the wretched; and there is evidence enough that those who claimed to be the delegates of Christ in binding and loosing were already beginning to abuse their power for the gratification of worldly passions. In the disgraceful contests for supremacy between the leading churches the anathema was employed as a sort of heavenly artillery for mutual destruction, reckless of the devastation wrought in whole provinces of the church, and the spirit in which it was used is often only too evident. When the Apostles urged the Saviour to destroy the Samaritan village which refused to receive them, He rebuked the revengeful spirit, saying, "For the Son of Man is not come to destroy men's lives, but to save them," and meekly turned to seek another resting-place. The church, which believed itself to speak in the name and by the authority of Him whom no insult or ill usage could move to anger, sometimes found that the ordinary process of damnation was too weak to satisfy its pas-

[1] Augustin. contra Epist. Parmenian. Lib. III. cap. 2 § 13.

sions, and sought to give a keener zest to the destruction of an antagonist. Thus, during the Monothelite quarrel, when, in 646, a political revolution had banished Pyrrhus, the Patriarch of Constantinople, from his see, and he took refuge in Rome, he recanted his heresy, but relapsed on proceeding to Ravenna. The holy rage of Pope Theodore at this apostasy could not be quenched by the usual formula of excommunication. He assembled his clergy at the tomb of St. Peter, and there launched the thunders of the church at the unhappy heretic. Then, calling for the sacred cup, he mingled some of the precious blood of the Lamb of God with the ink wherewith he signed the sentence which consigned Pyrrhus to degradation and perdition. In 869 the same hideous device was adopted at the council of Constantinople in the quarrel between Photius and Ignatius. Ignatius was reinstated in the patriarchate for a time, and Photius deposed and excommunicated. The sentence which condemned Photius and degraded all whom he had ordained was signed by the assembled bishops with ink containing the blood of the sacrifice.[1] Knowing the veneration felt at the time for the elements of the Eucharist, we might hesitate to believe that such profanation was possible, if it were not that nothing is sacred from the wrath of an angry churchman.

It was not, however, only in the strifes which shook the Christian world that the power to bind and to loose was shockingly abused. In the minuter ambitions and conflicts of daily life the control of the Eucharist was employed as an efficient weapon, and was degraded until there was danger that its power of exciting reverence might be exhausted. In his homily on the subject, which is an eloquent plea for charity and love, Chrysostom sadly declares that the anathema was distributed around so copiously and so ignorantly that the very Pagans made of it a mockery for the Christian faith; and its use had become so general that to say that such a one had

[1] Chr. Lupi Dissert. de Sexta Synodo cap. v. (Opp. III. 25.)

been excommunicated for a certain act excited no more attention than if it had been said that he had paid his devotions to God.[1] Chrysostom himself does not appear to doubt the power to damn without appeal, however much that power might be abused, but St. Augustine was more independent when he declared that if the name of a Christian was written in the book of life, it mattered little whether human ignorance struck it off from the diptychs of the church.[2] This was not orthodox, as may be seen by an epistle of Leo the Great reproving in the West the same abuses which Chrysostom denounced in the East. Writing to the bishops of Gaul in 445 he asserts that he has known men deprived of communion for light and careless words, and the souls for which Christ had shed His precious blood delivered helpless to Satan by a penalty which should be reserved for the gravest sins, and should only be applied with grief and unwillingness, not recklessly administered at the pleasure of an angry priest.[3] Well meant exhortations such as these, however, only recognized the evil without curing it; and there seemed a risk that the misuse of the power of excommunication might at length deaden the souls of men to its influence. It was about this period that St. Arsenius was forced to adopt the policy of separating from the church only old men whose lively dread of perdition rendered them amenable to the censure, for he had found by experience that in the flush of youth sinners were only hardened by it and rendered less susceptible to repentance.[4] Few ecclesiastics were so cautious as Arsenius, and the continued growth of the evil at length called for the interposition of the civil authority. Human nature could not be expected to wield with moderation the irresponsible powers claimed by the church, and the state, in self-defence, was obliged to interfere and assume the control of the sacraments of which the church had always boasted the

[1] Chrysost. Homil. de Anathemate cap. 1, 2.
[2] S. Augustin. Epist. 78 § 4 (Ed. Benedict.).
[3] Leon. PP. I. Epist. 10 cap. 8.
[4] Socrat. Hist. Eccles. Lib. IV. cap. 23.

exclusive guardianship. In 541, Justinian accordingly promulgated an edict forbidding all bishops and priests from excommunicating any one without a regular trial in accordance with the ancient rules. In cases of contravention of this law the excommunicate was to be restored to communion by superior ecclesiastical authority, and the excommunicator was himself to be suspended, under the operation of the *lex talionis*, for the same length of time as that to which he had condemned his victim,[1] a law which was continued in force by Basil the Macedonian and Leo the Philosopher.[2] Such legislation might be enforced in the East, where the state retained its full supremacy, but in the West, as has been seen in a preceding essay, the revolution which eventually left the church supreme, had commenced long before.

Exclusion from communion was not a mere local disability, which could be evaded by emigration from one diocese to another. The sinner was under the ban of a Divine law, which operated everywhere, and at an early period measures of police were adopted by which the sentence of a bishop in further Spain had as much force on the banks of the Euphrates as at home. No stranger, whether coming to reside or passing on his way as a traveller, could be admitted to communion without exhibiting *litteræ formatæ* or *commendatitiæ* from his bishop, showing him to be in full communion at home. All bishops were strictly interdicted from absolving the excommunicates of their brethren, and the rule was universal that the sentence could be reversed only by him who had pronounced it,[3] except where superior authority existed, as in the synods created by the council of Nicæa for the purpose.

As early as the Apostolic Canons and Constitutions, we find that these commendatory letters were fully in vogue, but also that shameless reprobates had already begun to take advantage

[1] Novell. 123 cap. xi. [2] Basilicon Lib. III. Tit. i. cap. 20.

[3] Canon. Apostol. can. xxxiii.—Concil. Eliberit. can. 53.—Concil. Arelatens. I. ann. 314 can. 16.

of the system, rendering extreme caution requisite to avoid imposition in receiving those which were forged or improperly obtained[1]—a fact confirmed by the council of Elvira in 302.[2] The council of Antioch repeats the rule in 341, showing that it was not properly observed, and adds that only bishops and chorepiscopi could give general letters, priests being restricted to recommending their communicants to the bishops of the neighboring dioceses.[3] Notwithstanding the antiquity of these regulations, the first council of Carthage in 348 insists on the production of such letters in terms which seem to show that the custom had not been generally observed in the African churches, and that its enforcement was necessary to render the sentence of excommunication respected.[4]

The prohibition of the reception of excommunicates by other bishops was repeated with a frequency and vigor which show how difficult its enforcement was found.[5] Various penalties were devised for the prevention of the abuse. As early as the third century, Cyprian declared that those who thus joined themselves to the guilty should not be separated in the punishment.[6] The general expression was that they should share in the excommunication;[7] though the second council of Carthage

[1] Canon. Apostol. can. xiii., xxxiv.—Constit. Apostol. Lib. II. cap. 62.

[2] Concil. Eliberit. can. 58. In the appendix to Marculfus (Formul. No. 12—Baluz. II. 304) and in Gratian (P. I. Dist. lxxiii.) will be found the devices adopted to prevent fraud. The letter was to be headed with the Greek letters π, $\dot{\upsilon}$, $\dot{a}$, π, being the initials of the Trinity, in whose name it was written. These were repeated at the foot, followed by the initials, also in Greek, of the writer, the party addressed, the bearer, the city whence written, and the indiction. If the trouble existed in an age of civilization, it of course must have increased enormously in the ignorance of the dark ages, when excommunication had become as common as education was rare.

[3] Concil. Antioch. can. 7, 8.

[4] Concil. Carthag. I. can. 7.

[5] Concil. Nicæn. I. can. 5.—Concil. Sardicens. can. 16.—Synod. Roman. ann. 384 ad Gallic. Episcopos can. 14, 15.—Concil. Taurinens. ann. 401 can. 7.—Innocent. PP. I. Epist. II. cap. 7.—Concil. Arausican. I. ann. 441 can. 11.—Felicis PP. III. Epist. VII., etc.

[6] Cyprian. Epist. 67 (Ed. Oxon.).

[7] Concil. Antioch. can. 2.—Statut. Eccles. Antiq. can. 73.

is more precise in specifying for them the penalty of the crime for which the excommunicate had been condemned.[1] In the form of excommunication used by Synesius we find that after warning all ecclesiastics to hold no intercourse with Andronicus and Thoas, he winds up by threatening—"And if any one contemns the church of our little city, as though it were needless to respect the poor, let him know that he divides the church which Christ made one. And whether he be deacon, or priest, or bishop, we will hold him as we hold Andronicus, for never will we take the hand or sit at the same table—much less partake of the sacred mysteries—with any one who has aught to do with Andronicus or Thoas."[2] This is mildness, however, compared with the ferocity manifested by Gelasius I. in his quarrel with the church of Constantinople over the excommunication of the Patriarch Acacius. Acacius had been orthodox, though tolerant, and, as the Emperor Zeno was laboring earnestly to heal the dissensions arising from the Nestorian and Eutychian heresies, he had not refused to join in communion with those who professed these heterodox dogmas. For this he had been excommunicated by Rome; and when his successor, Euphemius, entreated Gelasius to remove the separation which existed between the churches, the latter angrily replied: "This would not be stooping to support the church, but manifestly to plunge into hell. . . . . Was he not, by communing with the successors of Eutyches, liable to the same fate? And of such it is written, 'Living they descend into hell!'"[3]

These regulations established an efficient system of police throughout the church, and organized it as a body independent of the state. Notwithstanding their occasional, or even frequent, infraction, in the vast majority of cases they rendered the impenitent excommunicate an outcast, who could associate only with Pagans or heretics. After the conversion of Con-

[1] Concil. Carthag. II. can. 7.
[2] Synesii Epist. 58.
[3] Gelasii PP. I. Epist. 1 (Harduin. II. 881).

stantine the former rapidly dwindled in numbers, while the latter were soon reduced to a position endurable only by men who felt that they were suffering for conscience' sake. As the church was coterminous with the empire, and as the empire embraced all that was then considered the civilized world, there was thus no rest for the disobedient Christian save in recourse to the tender mercies of the Barbarian. Even this fearful alternative, however, was often preferred to the endless torments of existence under the ban of the church; and this may perhaps explain why nearly all conversions to Christianity among those not subject to the imperial authority were conversions not to orthodoxy but to heresy—why the Goths and Vandals and Burgundians were Arians, why the Christians of Central Asia were Nestorians, and those of Abyssinia Eutychians.

It was easy under such a code of discipline to break down the resistance of individual offenders, and to reduce to obedience the most recalcitrant of believers who were accessible either to the hopes of ambition in this world or to the fears of perdition in the next. But a different problem was presented in the case of those who conscientiously differed from the majority on some point of faith or observance; who courted excommunication as martyrdom in the cause of truth, or who themselves withdrew from communion as from contamination; and who were sufficiently numerous to establish congregations of their own, with priests and bishops, where they administered the Eucharist among themselves with a satisfaction peculiarly exasperating to the orthodox. In such cases the ordinary ecclesiastical censures were of course powerless, but the church was not therefore obliged to abandon the flock to the ravages of the wolves. Constituted as it was under the care and protection of the state, the latter was bound, as the supreme authority, to supplement its powers when required for the maintenance of discipline or the purity of faith. Constantine controlled the sacraments, as he showed when, deceived by the

cunning of Arius into the belief that that arch-heretic was orthodox, he ordered Alexander, Bishop of Constantinople, to admit him to communion, and the scandal was only prevented by the sudden and fearful death of the heresiarch while on his way in triumph to the church where the trembling bishop, not daring to refuse, awaited his advent.[1] It was, therefore, the duty of the sovereign to preserve the purity of the sacrament and the unity of the church, and the church found little difficulty in procuring from the orthodox emperors whatever legislation seemed requisite to effect this purpose. The history of persecution is too vast a subject to be treated here in detail. Suffice it to say that, with the exception of Constantius, who was an Arian, and Julian, who was a Pagan, every emperor, from Constantine to Valentinian III., has left enduring evidence of his zeal for the suppression of heterodoxy. The Theodosian code alone has preserved sixty-six edicts, promulgated in little more than a hundred years, which inflict on those who hold aloof from the communion of the church every variety of disability and penalty, from the suppression of their religious assemblies to the last resort of capital punishment.[2] This alone was wanting to place in the hands of the hierarchy absolute command over the souls and bodies of men. Within their communion there was obedience, without it persecution; and the Christian had but the choice between submission and outlawry. In theory, their power knew no limit, for they spoke in the name of the Most High, and practically it was only limited by the autocratic constitution of the empire, the supremacy of which they were not as yet prepared to seriously contest. In a sphere continually widening, they combined the legislative, the judicial, and the executive functions, for they were at once the framers, the expounders, and the ministers of the law.

As the church was essentially theocratic, and its discipline

[1] Socrat. Hist. Eccles. Lib. I. cap. 25.

[2] Lib. XVI. Cod. Theod. Tit. V.

was based upon the idea that the supernatural prerogatives conferred upon its ministers preserved them from abusing their sacred functions, its organization was of necessity despotic, excommunication being the weapon ever at hand to enforce subordination. As early as the Apostolic Constitutions we find the bishops, priests, and deacons all intrusted with the power of excommunicating, the only limitation being that they could not exercise it upon those higher than themselves in ecclesiastical rank.[1] As the organization of the hierarchy grew more complex, and additional grades were established, the bonds were, if anything, drawn more tightly. There is extant a curious set of canons in Arabic, passing under the name of those of Nicæa, and dating probably from the first half of the fifth century, which embodies a detailed statement of the relations existing between the various grades of the hierarchy and the laity. The patriarch was supreme within his own boundaries, with authority to judge all the faithful, from metropolitans to laymen, the council of the whole patriarchate being the only tribunal to which he was amenable. No bishop could excommunicate a brother bishop, all controversies between them being referred to the patriarch. No wrong could justify a priest in excommunicating a bishop, and any priest or deacon resisting his superior was cut off without mercy. Of course no layman could undertake to excommunicate an ecclesiastic; and if he made the attempt, he was promptly removed from communion, and not restored until he had satisfied his adversary by lengthened penitence and by embracing a monastic life. He who was excommunicated, no matter how unjustly or improperly, was obliged to endure it patiently until absolved, for excommunication lasted either until the death of the sinner, or until he had confessed his fault and made due submission.[2]

These arbitrary and irresponsible powers were never to be allowed to rust for want of use. As the church assumed that

[1] Constit. Apostol. Lib. VIII. cap. 24.

[2] Sanctum Patrum CCCXVIII. Const. XV. (Harduin. I. 503–4.)

it had to answer for the souls intrusted to its charge, it directed its officials to exercise over them the most minute and watchful supervision. The bishop was not to wait for complaints to be brought before him of lapses in faith or morals of his flock, but was to search out the infected sheep, and either cure or eject them, lest they should spread the disease to others; he was to see that the righteous preserved their righteousness, and that the evil were brought to acknowledge and repent their transgressions.[1] Thus, when Gregory Thaumaturgus heard of the ill-deeds of the Pontic Christians during an inroad of the Barbarians, he at once ordered commissioners to be dispatched thither armed with ample powers to search out the guilty and inflict on them condign spiritual penalties.[2] How effective and how untrammelled by form was this authority is seen in a canon of the first council of Toledo, held in 400, which provides that if a powerful man shall despoil the poor, or the clergy, or monks, and when summoned by his bishop shall disdain to answer, notice shall be sent to all the bishops of the province, who shall thenceforth hold him excommunicate until he shall submit and make restoration.[3] The minuteness of this supervision, moreover, is shown by the list of occupations which Christians were forbidden to follow under pain of expulsion, embracing not only pimps, procuresses, and prostitutes, but also actors, charioteers, gladiators, racers, minstrels, musicians, dancers, tavern-keepers, astrologers, and soothsayers, while soldiers were to promise to be content with their pay, and abstain from plundering or inflicting unnecessary injury.[4] But one thing was required to render this system complete in the control which the church acquired over the individual, and that was found when the practice of confession was introduced and enforced, which occurred at a period comparatively early.[5]

[1] Constit. Apostol. Lib. II. cap. 20, 21.—Cf. Sanct. Pat. CCCXVIII. ubi sup.

[2] Greg. Thaumaturg. Epist. can. vi. (Harduin. I. 196.)

[3] Concil. Toletan. I. can. xi. [4] Constit. Apostol. Lib. VIII. cap. 28.

[5] I have not investigated the question as to the probable date in which

Nor was it only by regulating the conduct of daily life among the faithful that the church wielded power so immense. To him who represented the living God, and who spoke in His name to enforce His laws, the ordinary distinctions of human rank were as naught. Compared with the majesty of the Almighty, the infinite littleness of humanity placed all men on the same level, and the proudest potentate was as much subject to the behests of the minister of Christ as the meanest slave. Before the ineffable mystery of the Eucharist there could be no acceptance of persons, and the poorest priest held in his hands the salvation of the ruler of men. This opened to the church a sphere of influence of which it was not slow to avail itself. Hardly had Constantine proclaimed his faith by decreeing toleration for Christianity, when we find the council of Arles, in 314, arranging to bring under the direct control of the church all those whose station gave them importance. It orders that whenever any Christian is appointed governor of a province, he shall take with him the customary letters of communion to the bishop of his seat of government, who shall exercise supervision over him, and promptly suspend him from communion in case he shall contravene in any respect the discipline of the church.[1] As Constantine, after his conversion, would naturally seek to strengthen himself against the Pagan party by intrusting, as far as possible, all offices of influence to those who were united with him in the faith, it is easy to see what enormous political influence was thus acquired by ecclesiastics, to be used for good or ill, for the benefit of humanity or for their own aggrandizement and that of the church.

An instance of the practical power thus accruing to the

confession to priests became customary, but already in the year 400 the council of Toledo (can. vi.) alludes to one of its evils which even then was making itself felt, and in 416 an epistle of Innocent I. (Epist. i. can. vii.) shows the system fully developed, the confessor having the power of absolution when satisfied of the contrition of the penitent.

[1] Concil. Arelatens. I. can. vii.

church is afforded by the quarrel already referred to between Synesius of Ptolemaïs and Andronicus, Governor of the Pentapolis. The latter, a cruel and sanguinary tyrant, distinguished his rule by savage and lawless oppression. Synesius dared to interpose between the despot and his victims, but his entreaties and exhortations were alike unheeded. Finally Andronicus grew restive under the reproaches of the one man who dared to resist him; he posted on the church door of Ptolemaïs an edict closing it to the faithful, and sacrilegiously boasted that his victims should not escape him, even if they were clinging to the feet of Christ Himself. Whatever doubts Synesius may have felt as to his power to punish the crimes of the governor vanished when the man thus dared openly to beard the church; he hesitated no longer, and promulgated the full sentence of excommunication against the impious wretch. At once the haughty defiance of Andronicus gave way; his friends interceded for him with Synesius, and it was with difficulty that the latter consented to suspend the sentence upon pledges of repentance and amendment.[1] In this, Synesius had an illustrious precedent of an excommunication launched not very long before by St. Athanasius against a wicked governor of Libya. The culprit was a native of Cappadocia, and St. Basil, the metropolitan of that province, on receiving the circular notification of excommunication, wrote to Athanasius that no one in that region should extend to the excommunicate the hospitality of fire, water, or shelter.[2]

Even the supremacy of the imperial dignity, approachable by no other power, was not exempt from the jurisdiction of the church. St. John Chrysostom declares that a man who approaches the Eucharist while unabsolved from sin is worse than one possessed by the devil, and as there can be no exception to so universal a rule he urges the ministers of God to refuse it to all who seek it unworthily—"be he a leader of

[1] Synesii Epist. 57, 58, 72, 89.

[2] Basil. Epist. 57 (ap. Baron. Annal. ann. 370, No. 92).

armies, or a prefect, or even he who wears the crown, for thou hast a power superior to his."[1] This control over the master of the world, however, was rather theoretical than practical. Constantius the Arian, baptized like his father only on his death-bed, was beyond the reach of the anathema, as was likewise the pagan Julian, and the orthodox emperors were surrounded by those who were rather courtiers than ardent members of the church militant. At length, however, a man arose whose commanding talents, unbending firmness, and unconquerable zeal fitted him to give the world a memorable example of the superiority of spiritual authority over temporal power. This was St. Ambrose, the noblest of the Latin fathers.

When the Emperor Gratian, in 383, was put to death by order of the tyrant Maximus, Ambrose was sent as an envoy to procure the body of the murdered sovereign. To most men the mission would have seemed a delicate one, but the prelate was not disposed to humble himself before the emperor. Rising to the full height of his supremacy as the vindicator of the prerogatives of the Most High, he boldly reproached Maximus with the crime which stained him with his sovereign's blood; he excommunicated him, and ordered him to undergo a due course of penitence if he desired, for the future, the favor of God; and the pious biographer and secretary of Ambrose assumes that the defeat and death of Maximus, which, however, did not occur until 388, were the direct result of his disregard of the commands of the man of God.[2]

Ambrose had already manifested the same contempt for earthly dignity, when the cause of religion was at stake, in refusing to the Empress Justina and her son Valentinian II., on account of their Arianism, the use of a church in Milan wherein to offer their impious devotions. The city was ortho-

[1] Chrysost. Homil. 82 in Matt. cap. 6 (Migne's Ed. V. 964-5).

[2] Paulini Vit. S. Ambros. cap. 19.—On a second mission to Maximus, in 387, Ambrose states that he refused to enter into communion with the bishops of the tyrant's court.—Ambrose, Epist. XXIV. cap. 12.

dox, and blindly attached to its bishop. It was not difficult to persuade the people that the bare toleration of heresy was persecution of the true faith; and Ambrose, when threatened for this contumacious resistance to the imperial commands, responded by tumults which speedily caused the courtiers and their masters to abandon the unholy design.[1] With equal firmness he rebuked the youthful Valentinian II., when the latter gave signs of yielding to the Pagan party in Rome, and of allowing them to restore some of their altars. Valentinian was as yet only a catechumen, and, not being admitted to communion, could not be threatened with excommunication, but Ambrose warned him that he should be excluded from the church itself. "You may enter the church, it is true, yet there you will find either no priests or those who will withstand you; and what can you reply to him who shall say, 'The church wishes no gifts from hands like thine, which have aided in adorning the temples of the false gods?'"[2]

In the hands of a man of dauntless fervor like Ambrose, the power conferred by the control of the sacraments was almost boundless, and the crowning proof of this was given when he dared to suspend from communion the Emperor Theodosius the Great; and the world saw with wonder its imperial master, in the full flush of his splendid victories, bend submissively before the moral greatness of an unarmed priest. The spectacle was indeed an impressive one, and seemed to promise that thenceforth the gospel truths of mercy and charity should reign supreme, and be at last acknowledged as the rule of life. The same hasty temperament which led Theodosius to permit the slaughter of Thessalonica, rendered him prompt to deplore it, and earnest in his remorse. Ambrose was swift to take advantage of the situation, and he addressed the emperor in language which must have sounded strangely in ears accustomed to the slavish adulation of the imperial court. "Thou art a

[1] Paulini op. cit. cap. 12–18.

[2] Ambrosii Epist. XVII. cap. 13, 14.—Ejusd. de Obitu Valentin. Consol. cap. 51.

man, and temptation comes to thee. Conquer it. Sin is washed away only by tears and repentance. Angels and archangels can do no more." The time was not yet, nor was Ambrose the man to suggest it, when the church's treasures of salvation were to be bought by splendid gifts to found monasteries and endow cathedrals. "The living God, who alone can say *I am with you*, stays his hand when we have sinned, only if we truly repent"—and he proceeds, not indeed formally to excommunicate, but in a deprecating way to intimate that he cannot admit the emperor to communion. "I have no reason to be contumacious, but I have reason to fear, and I dare not offer the sacrifice if you are present." Even this he seems to feel it necessary to justify by recounting a recent vision—a vision which the character of the man forbids us from stigmatizing as supposititious, and which was probably a dream suggested to his ardent mind by pondering over the perplexities of the situation.[1]

However deferential Ambrose may have been in communicating his determination to the emperor, he was none the less firm in maintaining it. He refused to allow Theodosius to enter the church until he should have peformed a public penance, and when the imperial culprit urged that David had been guilty of adultery and homicide, he was met with the reply that if he chose to imitate the Jewish monarch in sin, he must likewise imitate him in repentance.[2] In the splendid panegyric which Ambrose pronounced on the death of his friend, he does not omit to recount how "He laid aside all the imperial insignia. He publicly bewailed in the church the crime to which he had been beguiled by the fraud of others, and prayed with sighs and tears for pardon. The emperor was not ashamed, as so many private citizens are, to undergo a public penance; and until his death there was never a day in which he did not bewail his fault."[3]

[1] Ambrosii Epist. LI. cap. 11–14. [2] Paulini Vit. S. Ambros. cap. 24.

[3] Ambros. de Obitu Theodos. Orat. cap. 34.—So delicate was the conscientiousness of Theodosius, that, as Ambrose relates (loc. cit.), when

The somewhat theatrical account of the affair by Theodoret may reasonably be supposed to represent rather the fancy of the historian than the sober outlines of truth, but both he and the cooler Sozomen assert that one of the conditions imposed on Theodosius was the promulgation of a law prescribing an interval of thirty days between the rendering of a capital sentence and the signing of the death-warrant, so as to allow time for revision and reflection; and there is reason to believe that such was the case.[1]

Had the hierarchy been filled with men such as Ambrose, and the secular power been always in the hands of conscientious Christians like Theodosius, the moral development of mankind might ere now have almost realized the idea of the Gospel. Unfortunately neither conditions could be fulfilled, and the splendid example was lost to mankind, or at most only served as a precedent when Gregory VII. or Innocent III. desired to break down royal resistance to papal theocratic supremacy. At the same time it must be observed that even Ambrose did not dare to enforce the rules of the church against the imperial criminal. There was no formal excommunication, no segregation of the sinner from human society, no prolonged penitence, which the canons of Ancyra order to continue for five or seven years for involuntary homicide, and for life in cases of voluntary slaughter.[2] The emperor merely held himself aloof for a few months, and then on making application was restored to communion after undergoing a single act of public penitence.

he had defeated the tyrant Eugenius, he abstained from communion on account of the slaughter of his enemies, until assured of the favor of God by the arrival of his sons.

[1] Theodoreti Hist. Eccles. Lib. v. cap. 18.—Sozomen. Hist. Eccles. Lib. VII. cap. 24.—The law in question is found in both the imperial codes (Lib. IX. Cod. Theod. Tit. xl. l. 13, and Const. 20 Cod. IX. 47), but it is attributed to Gratian, under date of 382. Godefroi, however, after weighing the conflicting evidence, is inclined to believe that the date is erroneous, and that the ecclesiastical historians are correct in attributing it to the influence of St. Ambrose, at the time of the penance, in 390.

[2] Concil. Ancyrens. can. 21, 22.

Such as it was, however, the firmness of Ambrose had no imitators for centuries, and the highest dignitaries of the church recognized too well their subordination to their temporal masters to indulge in any experiments of the kind.[1] So thoroughly was this established that even when the imperial rule was subverted in Italy by the Barbarians, the awe inspired by the diadem of Constantinople was still too great to permit the popes to call the emperors to account for even the most flagrant misdeeds. Thus, when the Emperor Zeno endeavored to put an end to the quarrels between Eutychianism and orthodoxy by the Henoticon which enjoined mutual toleration, Felix III. in 484 promptly assembled a synod and pronounced the most extreme sentence of excommunication against the Patriarch Acacius for obeying the edict and joining in communion with heretics, but Zeno, the real author of the impiety, was wisely spared.[2] Felix, Acacius, and Zeno passed away, but the quarrel continued between their successors as bitter as ever. Gelasius I. asserted the papal prerogative more haughtily than any of his predecessors, and when Euphemius of Constantinople applied for restoration of communion between the churches, he was repulsed with curses unless he would consent to join in the excommunication of Acacius. This he was unable to do, as the new emperor, Anastasius, was resolved to maintain the toleration established by Zeno; but when Gelasius heard that Anastasius deemed himself included in the anathema, he hastened to write to his envoy Faustus that nothing had been further from his thoughts or from those of his predecessor, and he referred in proof to the letters of congratulation which had been promptly sent to the emperor on his accession to the throne by Felix, and to those which he had himself written on

[1] There are extant epistles in which Innocent I. excommunicates Arcadius and Eudoxia for the persecution of St. John Chrysostom, and the emperor humbly solicits restoration (Migne's Patrol. T. xx. pp. 629–34), but they are admitted on all hands to be forgeries—one of the innumerable pious attempts to manufacture evidence that the church from the beginning enjoyed all that it subsequently claimed.

[2] Felicis PP. III. Epist. vi.

his installation in the chair of St. Peter.[1] The sovereignty of Italy was then fiercely disputed between Theodoric the Goth and Odoacer the Herulian, and the siege of Ravenna was about to terminate in favor of the former; but the distant power of Constantinople was still near enough to make Gelasius feel that even this disclaimer to his legate was not sufficient, and he addressed an humble and adulatory letter to exculpate himself in the eyes of one who was maintaining the schism by supporting and communing with excommunicates. While not yielding a jot in consigning Acacius and Euphemius to perdition, and not denying the risk incurred by the emperor of sharing their fate, he cannot do more than implore him to beware of the divine judgment: "I pray, and entreat, and exhort you not to spurn my petition, which is that you should rather listen to my entreaties in this world than be exposed to my accusations in the next. Be not, I pray you, angry with me if I so love you that I would wish to assure you the perpetuation of your temporal sovereignty, and that you who govern in this world may also reign with Christ. But I leave it to your own conscience whether it is better that we should all acquire certain life as I desire, or should be devoted to inevitable death as they propose."[2]

The courage of Ambrose found more admirers than imitators. The fate of Vigilius was not reassuring; and it was not until the eighth century, when Leo the Isaurian committed the unpardonable sin of image-breaking, that a Roman pontiff could summon energy to blast the imperial purple with the withering censures of the church.

[1] Gelasii PP. I. Epist. iv.

[2] Gelasii PP. I. Epist. viii.

THE PAPACY.

In the practical development of the principles thus detailed, the church insensibly acquired an enormous power over its individual members, and an almost dominant influence even in political affairs. Although the supremacy of the state was still admitted, yet the foundation was laid for that mighty theocratic structure which in after ages was to overshadow all secular institutions with a superiority as assured as that of heaven over earth. In a religion of which the essence was the regulation of every thought, every feeling, and every act of the believer, it was impossible to define rigidly the bounds of spiritual authority, which were capable of indefinite extension as policy or ambition might dictate. We have seen that in the earlier times the church was so careful to confine itself to spiritual concerns that it was an unpardonable offence to nominate an ecclesiastic as executor of a will or as guardian of children, because it withdrew him to some extent from his proper sphere of action. When such principles prevailed there was comparatively little danger that the spiritual power conceded to the ecclesiastical body would be abused for purposes of aggrandizement, individual or general; but when the adoption of Christianity as a state religion opened to the churchman a career of worldly ambition, and when the gradual abasement of the civil authority seemed to invite its replacement by a theocracy, the primitive conscientious abstention from secular affairs was forgotten. Insensibly the spiritual jurisdiction widened, and the reconstruction of society under the Barbarians found the church in possession of prerogatives so elastic that, as opportunity offered, it was easy to justify the appropriation of any desirable fragment of power. Among believers, a very simple correlation of forces might transmute the authority to condemn or to save into any other authority that might be wanted. As early as the close of the fifth century, Gelasius could declare that "there is no sin so great but that the church

can pray for its remission; and, through the power granted to her by God, absolve him who desists and repents."[1] Who, then, could presume to set bounds to the aspirations of a body which might withhold the prayer or dictate the penance?

To render this awful power completely effective, however, required its concentration. As long as the autonomy of the bishops or of the metropolitans was maintained, there were constantly clashing interests and a lack of intelligent direction of the united authority of the ecclesiastical body towards a definite purpose. If the church was to obtain the temporal supremacy which her prerogatives placed within reach, it was necessary that her efforts should be directed by unity of purpose and concerted action, and this could be accomplished only by the subordination of all to one recognized head. It was the gradual assumption of this commanding position by the Holy See that enabled the church to realize the full benefits derivable from her control over the sacraments.

There were two principal instrumentalities through which the supremacy of the representatives of St. Peter was secured —the appellate power authorizing the Bishop of Rome to revise the sentences of other bishops by absolving their excommunicates, and the original jurisdiction by which they could expel from communion those who differed from them on points of faith or discipline, or who resisted their pretensions to domination. The growth of the appellate power has already been examined with some minuteness in a preceding essay, and need not now be adverted to except by reminding the reader how it became established, after a struggle which lasted for centuries. As regards the use of excommunication in asserting the supreme original jurisdiction of the Holy See, a few words, however, may not be out of place.

In the organization of the early church there was nothing to prevent any bishop from refusing communion to any of his brethren whom he might deem to err in faith or morals. If

[1] Gelasii PP. I. Tomus de Anathematis Vinculo.

this action was sustained by the majority of the churches, the victim was cut off, and if he persisted, he might be held as a schismatic; while, if the excommunicator was felt to be in the wrong, he incurred the same risk. For the first three hundred years all the evidence points to the complete equality between the churches as represented by their several primates. For instance, in the quarto-deciman controversy, respecting the computation of Easter, the Asian bishops, under the lead of Polycrates of Ephesus, maintained their right to celebrate the festival on the fourteenth day of the moon instead of on Sunday. Victor of Rome, becoming gradually heated and finding his arguments fruitless, at length, about the year 190, endeavored to cut off the Asian churches, and denounced them as excommunicate on account of their heterodoxy. For this he was rebuked by many leaders of the faithful, notably by Irenæus.[1] His decree of excommunication was disregarded, and the controversy was not decided until authoritatively settled against the Asians by the council of Nicæa in 325, followed by that of Antioch in 341.[2]

A half-century later, Cyprian, in his controversy with Stephen I. on the subject of the rebaptism of heretics, formally asserts this episcopal independence in his opening address at the council of Carthage, held in 256—"It remains for each of us to declare his opinion, judging no one nor presuming to deprive any one of communion for difference of belief. None of us has constituted himself a bishop of bishops, or has sought by the terror of tyranny to force his colleagues to subjection. In the exercise of his free authority every bishop has the right of judgment, and he can no more be judged by another than he can judge another. Let us await the universal judgment of Christ, who alone has the power of placing us over his church and of judging our actions."[3]

While Cyprian was thus modestly firm, St. Firmilian, Arch-

[1] Euseb. Hist. Eccles. Lib. v. cap. 24–26.

[2] Concil. Antioch. can. 1.

[3] Cypriani Opp. pp. 229–30 (Ed. Oxon.).

bishop of Cappadocian Cæsarea, could scarcely find words to express his contemptuous indignation at the presumption of Stephen in excommunicating the Eastern bishops for differing with him on this question. "I am justly indignant at this open and manifest folly of Stephen, who, puffed up by the location of his bishopric, presents himself as the successor of St. Peter, on whom are built the foundations of the church, and brings in many other stones and builds many additions to the church." Then addressing Stephen himself, he proceeds: "Truly you are the worst of all the heretics, for when they, acknowledging their errors, come to you for the true light of the church, you add to their errors and increase the darkness of the night of heresy by hiding the light of religious truth. . . . And, great as is your sin, you have still more exaggerated it by cutting yourself off from so many churches. You, I repeat, have cut yourself off. Do not deceive yourself, for if he is a schismatic who apostatizes from the communion of ecclesiastical unity, you, while you think to excommunicate others, only succeed in excommunicating yourself."[1] This vehement and uncourtly assertion of equality with Rome not only did not forfeit Firmilian's distinguished position and influence in the Eastern church, but did not prevent his enrolment in the catalogue of saints, and to this day his feast holds its place of October 28th in the Greek calendar.

The causes which led to the gradually increasing power of the papacy, through its influence over the emperors and the skilful use made of the dissensions of the Eastern churches, need not be recapitulated here. As that power grew, the artillery of excommunication increased in range and efficiency, and,

[1] Cypriani Epist. LXXV. cap. 17, 24, 25. Orthodox catholics have asserted that this epistle is a forgery, interpolated by some Donatist of the fourth century, and it was omitted in the Roman edition of Cyprian's works printed by P. Manutius in 1563. It is given in all subsequent editions, however, and Baluze states that it is contained in twenty-seven ancient MSS. collated by himself and previous editors. See his note, T. I. p. 1201 of Migne's reprint.

while it gave expression to the claims made by Rome for supremacy, it aided largely in establishing those claims. Thus, when in the internecine strife between Alexandria and Constantinople the former gained a temporary ascendency by procuring the degradation and banishment of St. John Chrysostom, the West stood boldly forth in defence of the persecuted saint, excommunicated the Eastern churches, and resolutely refused for eight years to allow the restoration of unity, until Chrysostom should be restored to his place on the diptychs, and be acknowledged as having been the legitimate Bishop of Constantinople until his death.[1] As representative spokesman for the West, Innocent I. found ample opportunity during this long quarrel to magnify the importance of his office. Thus, in receiving back the church of Antioch, in 415, he speaks with the calm supremacy of a master—"I have carefully inquired whether all the conditions have been fulfilled with respect to the case of the blessed John, that bishop worthy of God, and on finding them, according to the statement of the envoys, all met to my satisfaction, I have received the communion of your church."[2]

The successive victories of Theophilus over Chrysostom, of Cyril over Nestorius, and of Dioscorus over Flavianus, gave to the see of Alexandria so great a preponderance that it threatened to overshadow Rome herself, and even to become independent of the imperial power. Rome took the alarm, and endeavored to strengthen Constantinople as her least dangerous competitor; but her legates were treated with contumely at the Robber Synod of Ephesus, and were utterly powerless to save the Patriarch Flavianus. Leo I., who then wielded the authority of St. Peter, was not disposed to brook these insults; but when he solemnly excommunicated Dioscorus as the author of the troubles, the latter, secure in his overwhelming influence, and strengthened by his relations with the imperial court, boldly retorted the excommunication. A sudden change of dynasty, however, transferred the sceptre from the hands of

[1] Theodoreti Hist. Eccles. Lib. v. cap. 34.

[2] Innocent PP. I. Epist. 19; Cf. Epist. 21, 22.

the feeble Theodosius II. to Marcian, who, as orthodox and emperor, was not disposed to encourage either Eutychianism or Alexandrian insubordination. The council of Chalcedon found no difficulty in condemning Dioscorus. As the council was nominally presided over by the legates of Leo, and as one of them, Paschasinus, Bishop of Lilybæum, summed up the accusations against Dioscorus prior to the vote condemning him, it is no wonder that his audacity in excommunicating the Apostolic Bishop is enumerated among his crimes, though no mention is made of it in the sentence itself.[1]

This defeat broke the power of Alexandria, and left Rome and Constantinople face to face. The strife between these rivals was bitter and prolonged, but to enter into its details would lead us too far from our subject, and I need only take note of the rupture which for thirty-five years separated the communions of the East and the West on the subject of the excommunication of the Patriarch Acacius.

When the Emperor Zeno, in his desire to still the dissensions arising from the monophysite heresy, which the council of Chalcedon had utterly failed to suppress, issued his Henoticon commanding toleration, the orthodoxy of Rome was sadly disturbed. When, however, Peter Moggus of Alexandria, presuming upon the imperial indifference, dared to anathematize the sacred decrees of Chalcedon and the orthodox epistle of Leo, and to restore to the diptychs of his church the names of Dioscorus and of Timothy Ælurus, and when Acacius was found to remain in communion with so bold a heretic, Rome felt that her patience was no longer a virtue. In 484, Felix III. assembled around him a synod of sixty-seven bishops, and fulminated against Acacius a decree depriving him of his patriarchal office and consigning him to hopeless perdition—"Know that thou art set apart from all priestly honors, from Catholic communion, and from the flock of the faithful; that thou art deprived of the name and functions of the ministry of

[1] Concil. Chalced. Act. III. (Harduin. II. 343-78.)

God, and damned by the judgment of the Holy Ghost and the authority of the Apostle, never to be released from the bonds of the curse!"[1] As Acacius was supported by the favor of the emperor and the good-will of the Constantinopolitans, it was not easy to serve a notice of this sentence upon him; but at last an ardent monk of the sleepless monastery of Dios, noted for the violence of its orthodoxy, was found to undertake the dangerous office, but even he only dared to accomplish it by an artifice, which, when compared with the gravity of the missive, savored strongly of the ludicrous. Mingling with the crowd which surrounded the patriarch as he entered his church, the monk succeeded in pinning to his back the dangerous document. Even thus, however, the audacious volunteer was not successful in escaping detection, and his monastery suffered, in the slaughter of many of its inmates, for its share in the transaction; while Acacius promptly retorted by excommunicating Felix and his accomplices.[2]

Rome stood firm, for she had at stake not only the purity of the faith, but all her own claims to supremacy. Felix and Acacius both passed away, but when Euphemius, the successor of Acacius, applied to Gelasius I. for a restoration of communion between their churches, it was haughtily refused, unless he would consent to join in the condemnation of his predecessor by striking his name from the diptychs. Acacius had been of unquestioned orthodoxy, but he had not refused to join in communion with heretics, and his sin admitted neither of extenuation nor pardon. "Of such it is written, 'They are plunged alive into hell;' for while they seem to live the true and Catholic life of the just, they suddenly seek the depths of depravity or the hell of heretical communion. . . . . Dying in his treachery and damnation, his name can no more be included in the services of the church than could the contagion of his living communion."[3]

[1] Felicis PP. III. Epist. vi.

[2] Liberat. Breviar. cap. 18.—Niceph. Callist. H. E. Lib. xvi. cap. 17.

[3] Gelasii PP. I. Epist. I., VIII.

The quarrel went drearily on, depending for its issue much more on the political relations of the imperial court than on ecclesiastical considerations. Gelasius died in 496, but his successors, Anastasius II., Symmachus, and Hormisdas, were equally inexorable. The Emperor Anastasius, whose long reign extended to 518, sturdily supported the policy of his predecessor. Though himself a believer in the council of Chalcedon, and though at times, when sorely pressed by political complications, he eagerly sought a reconciliation which would have been of the greatest value to him, still he persistently refused the only terms which Rome would listen to—the condemnation of the memory of Acacius. At length he, too, died, and his throne was seized by the fiercely orthodox Justin, who hastened to make his submission to Hormisdas. The triumph of Rome was complete. The authors and leaders of the schism, orthodox and heretic alike, Acacius and Euphemius, Timothy Ælurus, Dioscorus II., and Peter of Alexandria, were promptly excommunicated by having their names erased from the sacred diptychs, and John the Patriarch made his peace by degrading himself in humble obedience to the Apostolic See—"I promise for the future not to recite amid the holy mysteries the names of those ejected from the communion of the Catholic church—that is, those not agreeing in all things with the Apostolic See. And if in anything I shall endeavor to render this my profession doubtful, I agree to submit to the fate of those whom I thus condemn."[1] John did not long survive this humiliation, and his successor, Epiphanius, was obliged to admit the supremacy of Rome in the most abject manner. He submitted for the approval of Hormisdas a declaration of faith; he solemnly declared that he did not allow to be read from the diptychs the names of those whom Rome had condemned; and, as if this was not enough, he had to call as

[1] Libell. Joannis inter Hormisdæ Epist. (Migne's Patrol. T. LXIII. p. 444). The signing of this pledge was made a condition precedent to admission to communion of all the Eastern bishops (Hormisdæ Epist. 51, Ibid. p. 461).

witnesses of his sincerity the papal legates who had zealously enforced the commands of their master.[1]

This would seem to be sufficient, but a further triumph was reserved for the policy or the fortune of Hormisdas. Under Zeno or Anastasius, Rome would have been content with the simple removal of the name of Acacius from the diptychs. Now she demanded that all who had remained in communion with him and his successors, and had thus contracted the contagion of Eutychianism, should be declared excommunicate by the same process. This was strictly logical, but difficult of execution, as it involved the whole Eastern Empire. Justin vainly endeavored to enforce it, but the innumerable churches of his dominions resisted the attempt to make them consign to perdition such multitudes of venerable prelates whom they had reverenced while living. With his nephew Justinian, then consul, he wrote beseechingly to Hormisdas to spare them the necessity of devastating their empire, as neither fire nor sword, the certainty of torment, nor the fear of death, could force the congregations, orthodox as they were, thus to declare their pastors excommunicate.[2] Letter after letter was sent, and one envoy after another, but Hormisdas long remained silent. At length he addressed to Justin an epistle, full of unctuous professions of Christianity, in which the emperor was reminded that he had set his hand to the plough, and that if he now looked back he was not fit for the kingdom of God; and, not content with kindling his orthodox zeal, Hormisdas stimulated the imperial pride by adroitly suggesting that those who would not follow the example of their sovereign should be forced to bend to his power. Still, even the pleasure of decimating the fairest provinces of the East in vindication of a punctilio might be forborne in view of a substantial benefit, and Hormisdas eluded the difficulty by appointing the Patriarch Epiphanius his vicar to readmit to communion those who had forfeited

[1] Relatio Epiphanii (Ibid. pp. 494–5).

[2] See the letters among the Epistles of Hormisdas.

their right. The elaborate instructions with which he accompanied this grant of delegated power were, if not intended, at least well adapted, to demonstrate that Rome held the keys of heaven, and that she alone could point out the path to salvation.[1] For the time, Constantinople was thoroughly humbled. Her sacraments were administered at the dictation of the Holy See; her Patriarch was but the local representative of the Pope, and Rome alone controlled the communion which was the Christian's only hope of grace.

The proud boast of Gelasius, made thirty years before, seemed to have received its fulfilment—"Everything is committed to the decision of the Apostolic See. What the Apostolic See affirms in its synods is to be received; what it rejects is to be rejected; and by itself it rescinds whatever is wrongfully decided by any synodical assembly."[2] Yet Rome could not foresee how humbly, in little more than a quarter of a century, she would submit to the denial of all her claims by the second general council of Constantinople, after the prosperous reign of Justinian had restored the imperial power; nor that the long silent church of Africa would dare in 550 to excommunicate Pope Vigilius for his cowardice in the affair of the Three Chapters.[3]

The relations of the papacy with the East were thus chequered until the latter half of the ninth century saw the rivals separated in permanent schism. In the West, meanwhile, the church was beginning to rally, after the shock of successive barbarian invasions, and gradually to acquire control over its new proselytes. The ecclesiastical organization participated largely in the dislocation of all the relations of political and civil society, and the supremacy which Rome had established with infinite pains became well nigh overthrown. In the protracted effort to reconquer its power, the Holy See found, as before, its most valuable instrument in its claim of

[1] Hormisdæ Epist. 78, 80.

[2] Gelasii Tomus de Anathematis Vinculo.

[3] Victor. Tunenens. Chron. ann. 550.

supreme control over the communion. The process is well illustrated by the manner in which Gregory the Great reduced to submission Maximus, Archbishop of Salona.

On the death of Natalis, Archbishop of Salona (afterwards Spalatro), there was a quarrel over the succession. Honoratus the archdeacon was elected and approved by Gregory; but the imperial power, represented by the troops, preferred Maximus, and a faction was easily formed to place him in the vacant seat. According to the papal writers, his reputation was not good—at all events, his rival was recognized, and Gregory wrote to the bishops of Dalmatia and Zara, prohibiting them from consecrating him. Large bribes, it is said, induced them to disregard this command, and Maximus was duly installed. Gregory then summoned him to Rome for trial on the charge of bribery. To this he demurred, asking that a commission should be sent to Salona to examine into the affair upon the spot; but to agree to this would have been to risk the integrity of his envoys, and Gregory refused. Finding that Maximus was unyielding, Gregory forbade him to celebrate mass, and then excommunicated him; but, supported by the imperial power, the contumacious archbishop disregarded the papal censures, and for seven years maintained his independent position. During this time Gregory was not idle. At first, but two of the clergy of Salona obeyed the sentence, and abstained from communion with their prelate, but Gregory attacked them with threats and exhortations; and he likewise threatened the bishops of Zara and Dalmatia with excommunication unless they should withdraw from the communion of Maximus, and erase his name from their diptychs. Terrified at this, they succumbed, abandoned Maximus, and begged for pardon. The only support of the recalcitrant archbishop now was Marcellus, the proconsul of Dalmatia, to whom Gregory then addressed himself, holding him responsible for the continuance of the strife, and significantly warning him to make his peace with God. At length Marcellus, too, gave way, and Maximus was reduced, in the year 600, to ask the intercession of Callinicus,

the Exarch of Ravenna. The terms granted were hard, yet Gregory represented them as a special favor to the Exarch. Marinianus of Ravenna, and Constantine of Milan, were appointed judges to examine whether Maximus had acquired his see simoniacally, and whether he had persisted in saying mass when he knew himself to be excommunicate. The investigation was a pre-arranged comedy, to the effect that if Maximus should deny, under oath, the guilt of simony, and should clear himself on the relics of St. Apollinaris of the other crimes imputed to him, then Marinianus should prescribe the penance for his contumacy—and the understanding in advance was shown by Castorius the notary bearing from Gregory the instructions to Marinianus, along with a letter of reconciliation to be delivered to Maximus after the performance of his allotted part. The penance inflicted was not prolonged, but it was exquisitely humiliating. For three hours Maximus prostrated himself in the dust, exclaiming, "I have sinned before God and the blessed Pope Gregory," until raised by Marinianus and Castorius; and then, in their presence, he performed still greater penance. He retained his see, but Rome had sharply vindicated her supremacy.[1]

THE CHURCH AND THE BARBARIANS.

Under Barbarian rule, the church found itself confronted by a new series of problems. In the Pagan Empire, the church consisted of pastors and people, with common interests and sympathies, exposed to the same evils, and forming an indivisible whole. Under the Christian Emperors, the clergy,

[1] Joan. Diac. Vit. S. Gregor. Lib. IV. cap. 9–15.—Gregor. PP. I. Regist. Lib. V. Epist. 21.—Lib. VI. Epist. 25, 26, 27.—Lib. VII. Epist. 17.—Lib. VIII. Epist. 10, 24.—Lib. IX. Epist. 5, 10, 41, 67, 79, 80, 81.

endowed with certain privileges, gradually found their personal interests diverging from those of the populations who had been converted in masses. Though technically the church of Christ might still be held to comprehend the laity, yet practically it consisted of the ecclesiastics, with whom naturally the advancement of their order and the preservation and extension of its immunities became the first consideration. This divergence between the clergy and the people was rapidly developed by the incursions and conversion of the Barbarians. There could be little in common between the established clergy of Gaul, for instance, and the untamed German hordes which presented themselves for Christianization and civilization; and the antagonism naturally existing under such circumstances left its indelible impress on the character and policy of the church. The priest who undertook parish duty amid a clan of wild Frankish converts, however conscientiously he might labor for their salvation, could not but feel that in the flesh they were possible enemies who might at any moment drive him away or slay him; and the supernatural prerogatives which, under Roman civilization, were scarcely required to enforce respect for his authority, became the only weapons of self-defence upon which he could rely.

The Barbarian was a man of deeds rather than of words. His laws were few and simple, and for the most part resolved themselves, in their ultimate analysis, into provisions for the payment of damages, which could be eluded by an appeal to brute force. Rude as they were, the history of the times shows that these laws could easily be brushed aside by any one with power and audacity sufficient to disregard them; and it can readily be imagined how hopeless would be the application to the *mallum*, or court of freemen, by a clerk who would be regarded with double contempt, as a Roman by his conquerors, and as a man of peace by warriors emulous only of martial renown. The attempt to escape this danger introduced a further cause of separation between the clergy and their new converts. As all law under the Barbarians was personal and

not territorial, the church found little difficulty at an early period in obtaining for its ministers the advantage of living under the Roman law, thus securing, nominally at least, the privileges and immunities granted by the Christian Emperors;[1] and in addition to this the safety of the ordained clergy was provided for by increased *wer-gilds*, or blood-money.[2]

Yet, notwithstanding these favors, the church was sorely oppressed by the lawless warriors who found it easier to pass enactments than to observe them or to enforce their observance. In a previous essay we have seen some of the means adopted to meet the necessities of this position, in procuring special privileges with regard to tribunals, and exemptions from ordinary processes of law. But, while these concessions served to separate more than ever the clergy from the laity, they afforded little practical protection from wrong and outrage. What was wanted was some speedy process that should be prepared for every emergency. Every freeman relied on his sword and right hand for self-protection. If the priest were not to be reduced into hopeless servitude, he too must have some ever ready weapon like the freeman's sword, which would either

[1] Secundum Legem Romanam qua ecclesia vivit.—Ll. Ripuar. Tit. lviii. § 1. This privilege was extended to the Italian church as late as the ninth century, by Louis le Débonnaire—Capit. ex Lege Longobard. (Baluz. I. 690). About the same period Florus Diaconus alludes to the enjoyment by the church of the prerogatives granted by the Christian Emperors, in his address to Modoin of Autun, complaining of the oppression of the church of Lyons—

> "Me Constantinus reverendo munit ab ore;
> Me quoque Theodosius protegit ore pio,
> Arcadio dulci perdulcis Honorius hæreus,
> Me dulci eloquio laudat, honorat, amat."
> (*Migne's Patrol.* T. CXIX. p. 255.)

[2] L. Salic. Tit. LXVIII. LXXVII. (Fourth Text of Pardessus). Ll. Ripuar Tit. XXXVI.—Ll. Alaman. Tit. X.–XVI.—For the murder of a bishop, the Baioarian laws provide a remarkable penalty. A tunic of lead, suitable for the murdered prelate, was made, and its weight had to be counterpoised in gold by the criminal. If he were unable to make good the amount, then he, his wife, and his children, were delivered to the church in servitude until the fine was paid.—Ll. Baioar. Tit. I. cap. xi. § 1.

prevent oppression by inspiring salutary fear, or avenge it on the spot.

The only weapon available for these purposes was to be found in excommunication. By heightening the supernatural attributes of the priest and of the sacrament which he made and controlled, he was invested with a vague and awe-inspiring sanctity, most conducive to his personal safety; and if, when no other means of righting himself were to be found, he had recourse to his power over the Eucharist on every trivial occasion, and distributed damnation freely in avenging every petty insult, we should remember the precariousness of his position, and the restrictions which debarred him from recourse to the only other arguments which his untamed flock was likely to respect. An illustration of this is to be found in the fearful curses which, about this time, came to be attached to the charters and privileges granted to monasteries and other religious foundations. The papal chancery had an ample store of formulas for these occasions, in which we see how the audacious violator of the rights of the church was condemned with an anathema which consigned him to hopeless and eternal hell-fire along with the devil and Judas Iscariot.[1] Even this sentence, terrible in its simplicity, was insufficient to awe the rude and unimpressionable natures with which the church had to deal, and formulas were invented which in their homely reduplication of malediction were designed to connect the curse with every detail of daily life in this world, as well as to awaken terror with respect to the inevitable fate in store in the world to come. As an example of this I may quote an anathema, probably of the seventh century, launched by an archbishop of Sens against some godless persecutors and invaders of the property of his church. After reciting their names and misdeeds he continues—

[1] Sciat se. . . . anathematis vinculo innodatum, et cum diabolo et ejus atrocissimis pompis atque cum Juda traditore . . . in æternum igne concremandum, simulque in chaos demersus cum impiis deficiat.—Lib. Diurn. Roman. Pontiff. cap. VII. tit. 22.—Cf. tit. 2, 5, 16, 18, 19.

"We anathematize them by the Father and the Son and the Holy Ghost, and by the authority granted us by God, so that they may have no part in Christianity; nor shall they enter a church of God, nor shall anyone celebrate mass for them, unless he wishes to share their punishment; nor, unless they render satisfaction, shall any oblation or commemoration with incense or frankincense be made for them. But, living or dying, they shall receive no portion of the holy light, and their lot shall be with the wicked, with the rebels towards God, and with the assailants of the Saints; and their inheritance shall be eternal fire and perpetual torment. Cursed be they in the town and cursed in the field, Amen! Cursed be they in their houses and cursed in their farms, Amen! Cursed be they in the forests and cursed in the waters, Amen! Cursed be they in the roads and cursed in the streets, and in all places, Amen! Unless they amend let them be involved in manifold maledictions, Amen! Let no priest visit them when dying, nor be they buried in holy ground, but be cast out as stinking corpses, Amen! Cursed be their granaries and cursed be what they leave, Amen! Cursed be they in going out and cursed in coming in, Amen! May the Lord strike them with want, with fever, with cold, with heat, with thirst, and persecute them until they perish, Amen! And as this candle is extinguished in the eyes of men, so may their light be extinguished in eternity, Amen!"[1]

Fearful as may seem the spirit of this elaborate malediction, we should not judge too harshly of those who sought by such endeavors to make an impression on a reckless and savage generation. Cursing was the only arm of the defenceless churchman, and if he cursed with heart and soul, we can only measure the apparent intensity of his malignity by the real intensity of his fear.

Even so temperate and sagacious a pontiff as Gregory the Great yielded to the irresistible necessities of the times, and was seen to fulminate the Apostolical anathema against unknown persons, without a trial, and for a very venial offence. In 597, Castorius, the papal notary at Ravenna, was annoyed by an anonymous satirical libel, and Gregory hastened to his assistance by addressing letters to the Ravennatese summoning

[1] D'Achery Spicilegium, III. 320–1.

the author to reveal himself and justify his accusations, in default of which he, and all privy to his act, were, in the name of God and Jesus Christ, deprived of communion. In the event of their remaining concealed and continuing to receive the prohibited body and blood of the Lord, they were anathematized and cut off from the church, and any papal letters of good wishes ignorantly addressed to them were declared null and void.[1] Yet Gregory could rebuke in others the prostitution of the power which he himself was ready thus to abuse. On a previous occasion he had told a priest who had been excommunicated by his bishop without cause that the sentence was void and need not be respected; and at another time he sternly reproved Januarius, Archbishop of Cagliari, for excommunicating and anathematizing a layman for some insulting words, assuring him that the rules of the church forbade the use of its censures to avenge personal injuries.[2] If such a man as Gregory could not restrain himself within the limits which he thus prescribed for others, it is easy to see how formidable was the power of every priest who could thus summon at will the omnipotence of God to overwhelm his adversary; and it cannot be a matter of surprise if the majority of ecclesiastics considered it to be their special office to inspire the laity with a salutary dread of their supernatural powers, whether exercised justly or unjustly, for worthy purposes or for considerations purely selfish.

It was therefore perfectly natural that there should spring up a luxuriant growth of miraculous interpositions of Providence to vindicate the respect due to the church and to punish the spoiler of her goods. In fact, the manufacture of these miracles became a recognized armory to which for centuries the ecclesiastical body was accustomed to resort. They formed part of the education of the people, who were thus trained to look with awe upon the priest and his church, with

[1] Gregor. PP. I. Regist. Lib. VI. Epist. 31.

[2] Ejusd. Lib. III. Epist. 26; Lib. II. Epist. 49.

its assortment of relics; upon the monastery with its tempting vineyards and orchards, and apiaries, and fields of grain; upon the episcopal palace and cathedral, with their treasures accumulated from the piety of generations. The unarmed churchman could ill guard by force the rich and widely-extended possessions intrusted to his care, and if he busied himself with imagining and disseminating the marvels which proved that his person and his property were the peculiar care of God, we should not too sternly judge and condemn him. What he repeated of the stories of others, he doubtless believed, for his training taught him to expect the active interference of God in behalf of the church. What he invented he no doubt regarded in the light of wholesome parables, like those in Holy Writ, to teach the wayward sons of men the path of righteousness.[1]

Thus it is interesting to observe that in Italy, where the barbarian oppressor with whom the priest had to deal was generally a heathen or an Arian, and therefore incapable of excommunication, the vengeance of Heaven usually overtakes the spoiler either by direct interposition or through a simple execration. When, for instance, Darida the Goth overran Samnium, some of his troops chanced to overtake Libertinus, prior of the monastery of Fondi, threw him from his horse, and took the animal with them. The holy man not only offered no resistance, but even handed them his whip with which to drive the beast, and resumed his interrupted prayer. The river Voltorno crossed their road at a short distance, and when they reached the ford they found that no amount of spurring and beating could force their horses to enter the water. Exhausted

[1] It is worthy of remark that miracles are very rarely recorded as wrought by men living at the time of the chronicler. No matter what his age may be, his miracle-workers are almost all of the past generation. In the vast collection of those instructive stories related by Gregory the Great in his Dialogues, his interlocutor is made to wonder why men able to perform these marvels are no longer to be found, to which Gregory replies that though there are none who do them there are plenty quite equal to those who had done them (Greg. Dialog. Lib. I. cap. 12). Each generation thus attributed its wonders to its predecessor.

by fruitless efforts, they remembered the priest whom they had just despoiled, and, taking his horse back, found him still absorbed in prayer. He refused to receive the horse again, and they were obliged to lift him by force upon the animal's back, after which they had no difficulty in fording the river.[1] A more pregnant warning was given at Todi, under the episcopate of Fortunatus, when some Goths stopping there on their way to Ravenna requited the hospitality shown them by seizing two boys from a farm of the church of Todi. Fortunatus sent for the leader and offered to redeem them at a liberal price, but was refused, when he quietly assured the barbarian that it would prove the worse for him. Disregarding the threat, the Goths set out with their captives, but before they had cleared the town, while passing the church of St. Peter, the horse of the chief fell, and his rider was disabled with a broken thigh. Recognizing the cause of this mishap to be the curse of the bishop, he at once sent him the two boys with a prayer for mercy. The placable Fortunatus responded with some holy water, a single application of which restored the Goth to perfect soundness, and he went on his way rejoicing.[2] But it was not the Barbarians alone who had cause to dread the anger of these holy men, so peculiarly befriended of heaven, as was shown by Boniface, Bishop of Ferentino, when, after saying mass, he had gone to dine at the house of a noble. As he sat down at the table, a strolling minstrel with a monkey came to the door and began striking his cymbals. "Alas, alas!" exclaimed the prelate, "that miserable wretch is dead. Here have I seated myself at table, and have not yet opened my mouth in the praise of God, and he comes with his monkey and plays with his cymbals. For mercy's sake give him meat and drink, but I tell you he is dead." The servants hastened to the vagrant with bread and wine, but, as he turned to leave the court-yard, a heavy stone fell on him from the gateway, inflicting on him a mortal injury of which he died the next

[1] Gregor. Dialog. Lib. I. cap. 2. [2] Ejusd. Lib. I. cap. 10.

day—giving, as Gregory remarks, a fearful warning of the dread with which the saints, the temples of God, are to be regarded.[1] These specimens will probably suffice as examples of innumerable similar teachings, by which the priest was exalted above the limits of humanity, and his weakness was rendered a tower of strength by the direct favor of God.[2]

Turning to the France of the same period, we find there no lack of miracles of the same kind, the very homeliness of which shows the character of the classes whom they were intended to influence, and how thoroughly these marvels entered into the daily life of the people.[3] That the lesson was sometimes effective is indicated by an incident in the life of St. Sulpicius of Bourges. King Dagobert levied an unlawful tax on the people and churches of Bourges, and deputed a certain Lull to collect it. Great excitement followed, and St. Sulpicius sent a hermit to the king to remonstrate and to threaten him with speedy death if he did not recall his impious edict. Dagobert was duly frightened, repealed the tax, and underwent penance for the attempt; while the narrowness of his escape was shown by the fate of Lull who persisted in endeavoring to exact the tribute, and who consequently died suddenly and miserably.[4]

In addition to the possession of this formidable power, the clergy were for the most part the custodians of the holy relics of martyrs, which, besides curing the blind, the halt, and the possessed of devils, could protect the devout believer from the malignity of evil spirits, the enmity of man, and the unforeseen accidents of nature. Gregory of Tours gravely relates that when his father, then a young man, was carried off from

[1] Gregor. Dialog. Lib. I. cap. 9.

[2] The reader who is curious to trace the development of this miraculous power, which was so efficient during the middle ages, will find an ample store of these legends in the Dialogues of Gregory. See, for instance, Lib. I. cap. 3, 4, 9.—Lib. III. cap. 12, 15, 26, 29, 37.—Lib. IV. cap. 21, 23.

[3] Gregor. Turon. Miracular. Lib. I. cap. 59, 61, 66, 72, 78, 79, 80, 92, 97, 105.

[4] Vit. S. Sulpic. Bituric. cap. 24, 25 (Migne's Patrol. T. LXXX. pp. 582–3).

Auvergne as a hostage by Theodebert I., he procured from a friendly priest some unknown relics, which he thenceforth always carried about him, and which protected him through life against the perils of flood and field, the assaults of his enemies, and the temptations of the flesh. After his death they passed into the hands of Gregory's mother, and their value may be estimated by a single one of the numerous marvels related of them by the historian. The crops had been gathered and the laborers were at work threshing out the grain. One day, while all were at dinner, a pile of chaff left burning by the men communicated to the stacks of grain; a high north wind was blowing; in a moment the stacks were ablaze, and the industry of the year seemed doomed to inevitable destruction, when his mother rushed from the dinner-table and held up the relics in the face of the flames. Instantly the fire extinguished itself, and not a grain of corn was found damaged, even though the chaff was burnt off.[1]

If such was the power of relics, we can readily understand the reverence inculcated for the Eucharist, the body and blood of the Lord, and for all that was concerned in its ministry. A count of Britanny, crippled with gout, and exhausting his revenues ineffectually in physicians and medicaments, bethought him that if he could lave his feet in one of the sacred vessels of the altar, he could not fail of a cure. His rank and influence procured the favor. The holy vessel was brought, but the strength of his faith which prompted the act could not palliate the prostitution to such base uses of the vase dedicated to the service of God. The malady suddenly increased, and the sick man never again was able to use his feet. The belief recorded in this story must have been wide-spread, for Gregory adds that a similar incident occurred to a chief of the Lombards.[2]

The reverence enjoined for the Host itself is illustrated in a judgment which befell Epachius, a priest of Riom. On the high

[1] Greg. Turon. Mirac. Lib. I. cap. 84.

[2] Ibid. cap. 85.

festival of Christmas eve, though about to celebrate the holy mysteries, he could not refrain from drinking deeply, and, full of wine, he dared to approach the Lord's Table which is spread only for the fasting. Breaking the Eucharist and distributing it as usual among the faithful, he took a fragment. No sooner had it touched his lips than he fell, shrieking and foaming at the mouth, in a fit of epilepsy from which he never recovered.[1]

When the sacred mysteries and those who controlled them were invested with these supernatural attributes, we can readily anticipate the fate of those who, professing the Catholic faith, refused obedience to the warnings or the sentence of the minister of God.

It was a lawless time, and the most terrible examples were scarce sufficient to influence the indomitable ferocity of the age. When Maracharius, Count of Angoulême, resigned his dignity and entered the church, he was speedily elevated to the episcopate of the city, while his temporal position was filled by his nephew Nantinus. Maracharius was soon after poisoned by some of his clerks, one of whom succeeded him in the bishopric, but in about a year he too died, and Heraclius was consecrated in the perilous dignity. Nantinus accused Heraclius of being privy to the death of his uncle, and proceeded to exercise his right of *faida* by spoiling the church and maltreating the ecclesiastics, one of whom he tortured to death. Heraclius duly excommunicated him, and a synod being held at Saintes in 579, Nantinus made his peace and was absolved on promise of amendment. Still incorrigible, however, before he restored to the bishop the lands and houses which he had seized, he devastated and ruined them, for which he was again deprived of communion. Heraclius dying, however, he purchased restoration from some venal bishops, but this simoniacal transaction availed not for the impenitent sinner. In a few months he was prostrated with a fearful disease, in which he continually exclaimed that his vitals were tortured and burned by Heraclius,

[1] Greg. Turon. Mirac. Lib. I. cap. 87.

who was calling him to judgment; and after his death his body, burned to blackness as though with living coals, was a terrible witness to all that the vengeance of the church, however long delayed, was inevitable.[1] Equally signal was the warning when Charibert, King of Paris, a year or two before, had set aside his queen Ingoberga, and had married first Merofledis and then her sister Marcovefa. This latter union was peculiarly abominable, for Marcovefa was a nun. St. Germain, Bishop of Paris, could no longer dissemble his indignation, and he excommunicated the guilty pair. Disregarding the awful sentence, they soon felt the result. Marcovefa died almost immediately, and Charibert was not long in following her.[2]

It will be seen from this that the untamed Merovingians as yet recked little of the censures of the church, and at the same time that there were prelates hardy enough to brave their unbridled anger, and to seek to curb in the name of God those whom no human laws could restrain. St. Nicetius of Trèves was one of these. When Thierry I. King of Metz was succeeded by his son Theodebert, who surrounded himself with licentious and lawless parasites, Nicetius strove to reform the disorders of the state by excommunicating the wicked courtiers. The king, however, still kept them about his person, till one day, when they attended him in church, the courageous bishop refused to consecrate the host in their presence. The king insisted, when suddenly a youth possessed by the devil commenced crying out in a loud voice, reciting the crimes of the king and his followers, and lauding the virtues of the bishop. After some further strife, the king dismissed his retinue, and then the youth whom the strength of a dozen men had not sufficed to drag from the pillar which he had embraced, suddenly loosed his hold at the sign of the cross from the bishop, and disappeared to be seen of men no more. This warning produced some amendment in the court; but when the kingdom passed into

[1] Greg. Turon. Hist. Franc. Lib. v. cap. 37.
[2] Ejusd. Lib. iv. cap. 26.

the hands of Clotair I., and the fearless bishop dared to excommunicate that terrible monarch, he was banished and was not permitted to return from exile until after the death of his persecutor.[1]

The church evidently had no easy task in thus endeavoring to extend its prerogative and to obtain control over the ungovernable passions of its new converts; and to its perplexities may probably be attributed the introduction of a new practice, which widened the influence and increased the force of excommunication. We have seen that St. Augustine deprecated the punishment of the innocent who might chance to be connected with the guilty, and sharply reproved a brother prelate for depriving of communion a whole family of which the head had incurred his censure;[2] and Leo the Great had forbidden that the penalty should be enforced on any who were not partners in the crime.[3] Yet when the church came to deal with those who too often mocked her thunders and only responded by a defiant aggravation of wickedness, or by persecuting those who sought to restrain them, it is no wonder if recourse should be had to a device by which public indignation might be brought to bear against them, and the community at large be interested in compelling their submission. This would, moreover, be suggested by the structure of society among the Barbarian tribes, in which the responsibility of the family and the sept for the offences of its individual members was the foundation of legal

[1] Greg. Turon. Vit. Patrum, cap. 17, §§ 2, 3. About the same period a reference to excommunication shows the influence which the church had acquired in the older Christianity of the Spanish Wisigoths. The fourth council of Toledo in 633 (can. 75) denounces excommunication against those who should oppose rebellious resistance to the king, and against the king who should oppress the people. These councils were the parliaments of the nation, and this canon was evidently an agreement between the monarch and his subjects by which the sanction of the church was invoked for the enforcement of their respective duties.

[2] Augustin. Epist. 250 § 1.—Cf. Contra Epist. Parmenian. Lib. III. cap. 2.

[3] Leon. PP. I. Epist. x. cap. 8.

procedure. Under such a system, the injustice which was reproved by St. Augustine and St. Leo was no longer apparent, and accordingly we find the *Interdict* beginning to make its appearance among those who little thought how irresistible a weapon they were forging for the overthrow of monarchs. Thus when in 586 Fredegonda caused Pretextatus, Bishop of Rouen, to be assassinated at the altar, and a noble Frank who reproached her with the crime to be poisoned, it was evidently useless to assail the royal Jezebel and to stimulate her to fresh outrages. Accordingly Leudovald, Bishop of Bayeux, after consultation with his brother prelates, ordered all the churches of Rouen to be closed, and the population to be deprived of the consolations of religion, until a general search should result in the discovery of the guilty participators in the crime.[1]

The church thus with little effect exhausted the resources of her authority in the effort to maintain order and to preserve the inviolability of the persons and property of her ministers. In the early period of the Frankish conquest, so little could she rely upon the control of the sacraments to insure even the safety of the hierarchy that in 517 the first council of Lyons adopted a canon providing that whenever the king should withdraw himself from communion all the bishops of the province should at once take refuge in monasteries, where they should remain ensconced until it might please the monarch to promise peace to all.[2] Christianity, it is evident, had as yet been able to instil but little reverence in the Merovingian heart for the sacraments of the altar or for the venerable men who administered them, and the process of educating the wild Teutonic races was

[1] Gregor. Turon. Hist. Franc. Lib. VIII. cap. 31.—St. Basil of Cæsarea is sometimes quoted as the inventor of the interdict, towards the close of the fourth century, because in a case wherein a young girl was carried off he not only excommunicated the immediate actors but also the inhabitants of a town where they had taken refuge (Basil Epist. 144, *ap.* Hericourt, Loix Eccles. E. 178). In this case, however, all were guilty, directly or indirectly, though the transaction was not in strict accordance with the ecclesiastical law of the period.

[2] Concil. Lugdun. I. ann. 517 can. 3.

slow. Still, the assiduous teachings to which I have alluded gradually produced their effect, and the kings came to understand that, however they might hold themselves above the obedience claimed by the church, still the traditions of Roman subordination which she cherished might render her a useful ally in establishing their own supremacy over the native independence of their subjects.

In the scanty fragments which remain to us of the legislation of that age we may therefore find some indications of a disposition to support the censures of the church by the secular power. Slight as these are, they possess interest as the first indications of the long-existing alliance between kingcraft and priestcraft, which exercised so powerful an influence over the development of European civilization, and which eventually enabled the church to triumph over both king and people.

Thus, in 585, the second council of Macon adopted various canons threatening excommunication for sundry offences, such as the refusal to pay tithes and the oppression of the poor by the rich; and, more significant still, it commanded under penalty of suspension from communion that no mounted layman should meet an ecclesiastic without dismounting and humbly saluting him.[1] In the same year King Gontran issued an edict confirming the acts of this council, which he asserts to have been drawn up at his suggestion. In a manner somewhat vague he threatens that those who could not be corrected by priestly exhortations should be coerced by legal proceedings, and he confers by implication great power on his bishops when he declares that they share in the sins of those whose evil deeds they dissemble in silence.[2] Ten years later, Childebert II. manifested a similar disposition. In a decree forbidding marriages within the prohibited degrees, and ordering his subjects to obey the directions of their bishops with regard to them, he adds that if any one should be excommunicated for disobedi-

[1] Concil. Matiscon. II. ann. 585 can. 4, 5, 14, 15.

[2] Præcept. Guntramni ann. 585 (Baluz. I. 7).

ence, he would not only be forever condemned in the sight of God, but should be banished from the royal palace and his property be divided among his heirs as a punishment for refusing to submit to the remedial measures enjoined by the church.[1] Among the Spanish Wisigoths the same tendency is observable, for about this period St. Isidor of Seville lays it down as a general rule that where the ecclesiastical authority is insufficient to command obedience, it is the duty of the civil power to interfere and enforce the discipline of the church.[2]

These declarations, however, derive their only importance from their significance in foreshadowing the distant future. They could not, at the time, save the church from the evils to which it was daily exposed, and though for awhile it might seem to gain in power and influence, the development of events speedily showed the unstable foundations upon which its authority was based. As the house of Clovis tore itself to pieces and gradually passed away in the long revolution which ended in establishing the family of Pepin on the throne, the church almost disappeared in the dismal anarchy of the period. The episcopates became filled with warlike Franks who regarded them merely as offices of secular dignity and power, while the character of the clergy may be imagined from the denunciations of Pope Zachary in 743, when he describes them as being laymen in all but the right to administer the sacraments.[3] He especially rebukes the martial ardor which they universally displayed; and so deeply rooted had their warlike habits become that when, after many attempts to eradicate them, Charlemagne in 803 made a most solemn and impressive effort in conjunction with Pope Leo to restrain the unclerical military aspirations of the church, he felt obliged to accompany the prohibition of

[1] Decret. Childebert. circa ann. 595 (Baluz. I. 11). The text as given both by Baluze and Canciani (II. 116) by the use of the word "crinosis" would seem to restrict to the royal line the application of this decree; but Canciani mentions the reading "criminosis" as given by another MS. which would render its application general.

[2] Isidor. Hispalens. Sentent. Lib. III. cap. 51 §§ 4, 5.

[3] Bonifacii Epist. 137.

bearing arms with an assurance to the people that this measure was not intended as preliminary to despoiling the clergy of their possessions—a rumor to this effect having apparently found ready believers.[1]

CARLOVINGIAN RECONSTRUCTION.

In a state of society so lawless, and with a church so profaned, ecclesiastical censures could have been little employed and less regarded. When, however, the sons of Charles Martel endeavored to establish the new dynasty on a firm foundation, the piety of Carloman soon recognized that the reformation and rebuilding of the church was the surest basis on which to establish power; while Pepin le Bref, as soon as he had seized the crown under papal authority, felt that the fortunes of his house were indissolubly united with those of the hierarchy. The sagacity of Charlemagne recognized not only this, but also that the church was the most efficient instrument that he could use in civilizing the motley aggregation of races which constituted his empire. Thus the first practical step taken by Carloman in the reconstruction of society was the assembling of a council in 742, where he appointed St. Boniface to the primacy of his church, and ordered the convention of a yearly synod to reform the ecclesiastical disorders which seemed to defy all hope of improvement.[2] The same spirit is shown throughout all the legislation of Charlemagne, as, for instance, in the organization of his Saxon conquests in 789. His first act is to divide his newly-acquired territory into eight dioceses, for which he at

[1] Capit. Carol. Mag. VIII. ann. 803. Cf. Capit. incerti anni cap. 1 (Baluz. I. 288, 357). How little this accomplished in repressing the martial tendencies of the clergy is seen by a similar prohibition as late as 846.—Capit. Carol. Calvi Tit. VII. cap. 37 (Baluz. II. 24).

[2] Karolomanni Capit. I. ann. 742 cap. 1 (Baluz. I. 103).

once appoints bishops; and while he declares his new subjects to be free and not liable to taxation, he orders the strict payment of tithes for the support of the churches. So, while he decrees the penalty of death for a number of offences, from conspiring to rebel or refusing baptism, down to eating meat in Lent without a dispensation, he adds that in all these cases, if the offender shall voluntarily confess to a priest and submit to penance, the evidence of the ecclesiastic shall save his life.[1]

As Charlemagne never for a moment abandoned the control which he exercised over every ecclesiastic, from the pope to the monk, he might thus safely make use of the clergy in the task of reducing his rugged subjects to order. When he could command them never to refuse the viaticum to the dying sinner,[2] he could safely delegate to them a part of his authority; and to render that authority more efficient, that he might use them to greater advantage, he could enjoin implicit obedience to them on the part of his subjects, from the lowest to the highest. "In truth, he is more to be feared who can plunge body and soul into hell than he who can merely torture the body," and as these spiritual and distant terrors were not likely to be efficient, he adds that those who prove incorrigibly disobedient, even if they be his own sons, shall be proclaimed infamous, their property be confiscated, and themselves be driven into exile.[3]

When such was the recognized Carlovingian policy, it is not surprising that the assistance of the state was lent to the enforcement of ecclesiastical censures, and that those who were not to be daunted with threats of spiritual punishment should

[1] Carol. Mag. Præcept. de Episc. per Saxon.—Præcept. pro Trutmanno Comite.—Capit. de Part. Saxon. cap. iii.–xiv. (Baluz. I. 179–83.)

[2] Carol. Mag. Capit. Episcopor. ann. 801. (Baluz. I. 258.)

[3] Carol. Mag. Capit. ap. Theodonis Villam (Baluz. I. 305). The terms in which this capitulary is drawn are so extreme that I am strongly inclined to suspect its genuineness. Its general spirit, however, is amply confirmed by others. Cf. Edict. Domin. c. ann. 800; Capitul. Ad. III. cap. 97 (Baluz. I. 236, 587). Also, Concil. Arelatens. VI. ann. 813 can. 13 (Harduin. IV. 1005).

be brought to reason with more substantial penalties. The policy doubtless served its purpose for the moment, nor could the early Carlovingians, struggling with the gigantic barbarism of the age, see into the future when the secular inflictions affixed to excommunication should become the most efficient weapon of oppression in the armory of the hierarchy; or that the alliance which they now formed between the church and state would enable the former through centuries to dominate the latter with a despotism unparalleled. It is these results in the far distant future, of tremendous import in the history of civilization, that impart interest to the obscure and apparently trivial details of the legislation by which the church gradually acquired the right to call upon the civil power to execute her decrees without appeal and without examination.

So completely had ecclesiastical discipline been relaxed during the later Merovingian period that even the meaning and purport of excommunication had become well-nigh forgotten. In 755, Pepin le Bref, at the assembly of Verneuil, was obliged to explain to the people what were the rules to be enforced on excommunicates, and even in 802 Charlemagne felt called upon to proclaim that the kingdom of God was reserved for those who lived and died in the communion of the church. By successive edicts thus the old canons of the church were revived—the strict segregation of the impenitent from all intercourse with Christians, the prohibition to receive him until reconciled by the one who had ejected him, and the necessity of commendatory letters for those who travelled or changed their residence.[1] Yet the forgotten discipline thus resuscitated was changed in character, for it was no longer the simple expression of the internal regulations of the church, but as proclaimed by the monarch it became the law of the land. Formerly it could only be enforced by the moral power of the

[1] Synod. Vernens. ann. 755 cap. 9.—Capit. Aquisgranens. ann. 789 cap. 1, 3.—Carol. Mag. Capit. I. ann. 802 cap. 41 (Baluz. I. 122, 155–6, 268). Also Capitul. Lib. v. cap. 62.—Carol. Mag. Capit. in Ll. Longobard. II. 26, 1 (Baluz. I. 254.—Canciani I. 166).

church; now it could call upon the irresistible authority of the state, and the canons of Nicæa, of Sardica, of Antioch, of Carthage, and of Chalcedon, when quoted and explained in the capitularies of the sovereign of Western Europe, acquired a new significance of which the ultimate development was not to be realized for five hundred years.

There were two subjects which attracted particular attention in the civilizing efforts of the Carlovingians, affording at once special incitement in urging the revival of excommunication and in enforcing its penalties by the secular power. These were the marriage of persons within the prohibited degrees, and the spoliation to which the church was exposed in the general lawlessness of society.

Without entering into the polemical questions respecting the sacramental nature of the marriage ceremony, it is easy to understand why the early Christians, in their horror of the laxity prevailing among the Gentiles, invested the marriage rite with peculiar sanctity, and confided its performance to the priest.[1] Those who endeavored to render every act of life an expression of pious fervor were not likely to allow so solemn an occasion to be divested of religious ceremony, and accordingly the sacerdotal benediction was esteemed an essential part of the nuptial celebration at a comparatively early period.[2]

[1] The Encyclical of Leo XIII. on Christian Marriage (Feb. 10th 1880) quotes the various admonitions given in the New Testament, whence it is assumed, with the ordinary theological logic, that the church "has exercised authority over the marriage of Christians at every time and in every place, and has so exercised it as to show that it was her own inherent right, not obtained by the conception of men, but divinely bestowed by the will of the Author."

[2] Innocent. PP. I. Epist. II. cap. 6.—Synesius (Epist. 105) speaks of receiving his wife from the holy hands of Theophilus, Archbishop of Alexandria. An allusion of Clement of Alexandria (Stromat. Lib. IV. Ed. 1629, p. 524), and of Tertullian (Ad Uxor. Lib. II. cap. ix.) would seem to indicate that religious observances formed part of the nuptial ceremony as early as the second century, and even in the times of St. Ignatius some clerical supervision was exercised over the unions of the faithful (Epist.

Not only this, but the supervision exercised by the church over the morality of the faithful aided in giving it especial control over the delicate questions connected with matrimony, and accordingly some of the earliest canons which have reached us relate to regulations adopted to prevent what were regarded as improper marriages;[1] while the prohibition of incest in the Mosaic law seemed to render this a matter of which the church ought to assume the special guardianship. Therefore when, in 601, St. Augustine of Canterbury applied to Gregory I. for instructions regarding the prohibited degrees, the latter, while deprecating, on account of its effect on posterity, the marriages of first cousins permitted by the Roman law, had no hesitation in prescribing for the Barbarians rules which he had no power to enforce at home. He accordingly directed that among the Saxon converts marriage should not be permitted between parties related more closely than the third or fourth degree.[2] By this time also the church was acquiring fresh authority in these matters by the doctrine of spiritual affinity, preventing or rendering null the marriage of those who had connected themselves as sponsors in baptism, and the shrewd device is well known by which Fredegonda succeeded in getting rid of Audovera, the queen of Chilperic, when she desired to marry him for the second time. A daughter was born to Audovera during the king's absence on a military expedition, and the

ad Polycarp. cap. v.). Many matters connected with marriage necessarily came under the care of the church as the guardian of faith and morals.

[1] Concil. Eliberit. ann. 305 can. 8, 9, 10, 14, 15, 16, 17.

[2] Gregor. PP. I. Regist. Lib. xi. Epist. 64, Interrog. 6.—This decree was of course a stumbling-block to the zealous churchmen who subsequently extended the prohibition so much further, and it was neutralized by the usual expedient of forgery. Two epistles were fabricated—one from Felix, Bishop of Messina, to Gregory, expressing his surprise at a decision so contrary to all the customs of the fathers from the time of the Nicene Council, and the other a reply from Gregory explaining that he had relaxed the rules temporarily for the benefit of the rude and barbarous converts of Augustine, without any intention of introducing this laxity into the church at large.—Regist. Lib. xiv. Epist. 16, 17.

cunning Fredegonda persuaded her that it would be an agreeable surprise to Chilperic to find on his return the infant baptized, and that their union would be rendered dearer and more sacred if she herself would hold the child at the font. Audovera consented, and thus contracted a spiritual affinity with her husband which rendered separation obligatory; she was promptly relegated to a convent, and Fredegonda triumphed in the success of her audacious scheme.[1]

We have seen how Gregory the Great prescribed for the ignorance of the Saxons restrictions which were not submitted to in Rome; and however difficult it might be to enforce such regulations, it was easy to decree them. Gregory's example, therefore, did not lack imitators, and in the eighth century we find his successor Gregory III. instructing Boniface to prohibit all marriages as far as the seventh degree.[2] By this time the right of the church to control such matters was acknowledged, but these instructions fell upon a hardened and stiff-necked generation. Even the thunders of the church had not prevented the Merovingians from surrounding themselves with harems, and it mattered little whether the inmates bore the title of concubines or wives. At a comparatively early period, the Salic Law and the other Barbarian codes forbade incestuous unions under various severe penalties,[3] but the holy St. Nicetius, when he ventured to excommunicate some of his unruly flock for transgressions of this nature, was met with

[1] Aimoini Hist. Francor. Lib. III. cap. vi.—In the Icelandic church, which differed in so many respects from that of the rest of Europe, this rule seems to have been disregarded. The code of ecclesiastical law in force from 1122 to 1275 expressly declares that a father who under stress of necessity baptizes his own child is not therefore required to separate from his wife.—Kristinrettr Thorlaks oc Ketils, cap. III. (Havniæ 1776, p. 13).

[2] Gregor. PP. III. Epist. 1 cap. 5.

[3] L. Salic. Text. Herold. Tit. XIV. § xii.—Text. Emend. Tit. XIV. § xvi.—This provision, however, is not to be found in the earliest texts, such as that of the MS. Guelferbyt.—See also L. Alamann. Tit. XXXIX.—L. Baioar. Tit. VI. § 1.

obloquy and persecution.[1] Charlemagne's laxity with respect to the marriage tie is notorious, and so late as the ninth century we find the Emperor Lothair issuing a law which formally forbids any one to have two wives at once.[2] Men who cared so little for the plainest precepts of the law regulating matrimony, were not likely to regard a rule which was so difficult of observance, and which required so nice an acquaintance with genealogy as was necessary to ascertain the shadow of relationship expressed by the seventh degree of kinship; and accordingly the enforcement of the restriction was tacitly admitted to be impossible. Strenuous efforts, however, were made unceasingly to bring under some sort of control the rebellious natures of the Franks, and in these we find the earliest traces of the aid lent by the State to cause the censures of the church to be respected. These efforts, moreover, are of interest, as they are the source of the ecclesiastical jurisdiction over all questions connected with marriage which subsequently enured so much to the power and profit of the church.

Thus already, in 752, Pepin le Bref issued a capitulary forbidding marriages as far as the fourth grade, although parties related to the fourth degree, if married, were not to be separated. Even in this modified form, obedience, apparently, was not expected, for the bishops were instructed to look sharply after such incestuous unions; if the sinners were obdurate, they were to be expelled from the church, and if this did not succeed in bringing them to submission, there was a vague intimation that secular force would be employed.[3] How little success attended this legislation is shown by the decrees of 755 and 757, in which persons guilty of these incestuous marriages were threatened with purely temporal penalties, such as fines, imprisonment, etc.;[4] while another of 755, after denouncing

[1] Epist. Francor. xi. (Freher. Corp. Hist. Francor. p. 194).

[2] Ll. Longobard. II. 13, 7.

[3] Synod. Vermeriens. ann. 752 cap. 1, 9 (Baluz. I. 118). Cf. Capitul. Lib. v. c. 165.

[4] Capit. Metens. ann. 755 cap. 1.—Capit. Compendiens. anu. 757 cap. 1, 2, 19 (Baluz. I. 125, 129).

excommunication as the punishment, adds that if any one disregards it, and proves too stubborn for his bishop, he shall be exiled by the royal power.[1]

One of the earliest laws of Charlemagne enjoins on the priesthood especial watchfulness with respect to these prohibited marriages; and ten years later, in 779, he specifically conferred upon the bishops the power to coerce all incestuous persons.[2] Not long afterwards he decreed confiscation as a punishment for those who refused obedience to their bishops in this matter.[3] These efforts were ineffectual, and in 802 he commanded that no marriage should be celebrated until the bishop, priest, and elders had carefully examined into the possible consanguinity of the spouses. If, in spite of these precautions, such unions took place, the bishop was directed to separate the parties, and those who should refuse obedience were to be brought before the emperor himself, as in the case of a certain Fricco, who had not long before committed incest by marrying a nun.[4]

It was an evil generation, and hard to bring into subjection. As Charlemagne's career as a lawgiver had opened, so it may he said to have closed, with an attempt to enforce the canon. In 813 the bishops assembled at Tours deplored the multitude of incestuous marriages which no ecclesiastical censures could prevent, as the sinners made light of excommunication, and could only be coerced by the secular power.[5] A council held at the same time at Mainz renewed the prohibition of marriage to the fourth degree, and ordered all persons so united to be separated; due penance was also enjoined, with a threat of expulsion from the church for those who refused to

[1] Synod. Vernens. ann. 755 cap. 9.—Cf. Capitul. Lib. v. cap. 62.

[2] Carol. Mag. Capit. ann. 769 cap. 10. Ejusd. ann. 779 cap. 5 (Baluz. I. 137, 141).

[3] Capit. Caroli Magni incerti anni c. v. (Martene Ampl. Coll. VII. 6).

[4] Carol. Mag. Capit. I. ann. 802 cap. 33, 35, 38 (Baluz. I. 265-66). Cf. Capitul. Lib. VII. cap. 432.

[5] Concil. Turon. III. ann. 813 can. 41 (Harduin. IV. 1028).—Capitul. Lib. II. cap. 43.

undergo it.[1] Charlemagne responded but feebly to these appeals. He contented himself with ordering increased watchfulness on the subject, and the expulsion from the church of those who refused the performance of due penitence.[2]

It is not to be supposed that the manufacturers of the False Decretals neglected this matter. An epistle attributed to Calixtus I. argues at much length against the legality of marriages between kindred, showing how little had been accomplished by previous efforts.[3] The correspondence forged between Gregory the Great and Felix of Messina extended the prohibition to the seventh degree;[4] and a canon attributed to Pope Julius gave increased antiquity to this rule.[5] At the same time another, to which the name of Pope Fabian was attached, shows the confusion which existed, by reducing the prohibition to the fourth degree, and forbidding the separation of those already married, being substantially a repetition of the Carlovingian rule.[6] Benedict the Levite was bolder, and in transferring to his collection of capitularies the canon of the council of Mainz of 813, he adroitly extended the prohibition from the fourth degree to the fifth and sixth;[7] and subsequently he fabricated others which carried it to the seventh.[8] These being copied by Hincmar, Burchardt, Ivo, and Gratian, it was rendered difficult for any man to know whether he was properly married or not, and, as we shall see hereafter, there was afforded to the

[1] Concil. Mogunt. ann. 813 can. 54 (Harduin. IV. 1016).

[2] Carol. Mag. Capit. I. ann. 813 cap. 8 (Baluz. I. 343).

[3] Pseudo Calixt. Epist. II.—quoted in Gratian P. II. caus. 35 q. ii. can. 2.

[4] Pseudo-Felicis et Pseudo-Gregor. Epist. (Regist. Lib. XIV. Epist. 16, 17).

[5] Pseudo-Julian. in Gratian. P. II. caus. 35 q. ii. can. 7.

[6] Pseudo-Fabian. in Gratian. P. II. caus. 35 q. ii. can. 3.

[7] Capitul. Lib. V. cap. 166.

[8] Ibid. Lib. VI. cap. 209. The importance attached to this subject, and the difficulty of enforcing the rule, are attested by Benedict's endless recurrence to it. See, for instance, Capitul. Lib. V. cap. 9, 91, 165, 304; Lib. VI. cap. 76, 106, 410; Lib. VII. cap. 257, 356, 377, 432, 433, 434, 435; Addit. III. cap. 124, etc.

church, the opportunity of intervening effectually in the affairs of princes and kingdoms.

The other subject which seemed to call especially for the intervention of the secular power in support of spiritual censures was the oppression and spoliation to which the church was exposed as soon as its ministers had been deprived of the opportunity of self-defence by prohibiting them from bearing arms. At the same assembly of Worms in 803 which asked for this restriction, the nobles petitioned the emperor to imprison all who might invade the rights of the church until they should perform public and canonical penance. As all such offenders were excommunicate, the petitioners pledged themselves to hold them as infamous, and not to associate with them in war or in peace, in the church, in the court, or on the road; to forbid their retainers from consorting with those of the sinners thus proscribed, and even to keep their horses and cattle separate, for fear of contamination. To this request the emperor assented, and, with the approval of the estates of his empire, he issued a decree, which the judges were specially ordered to enforce, denouncing all invasion of church property as liable to the punishments of sacrilege, theft, and murder. He also ordered the bishops to anathematize the guilty, so that they might lack Christian burial and be deprived of the prayers and sacrifices of the church.[1] In another capitulary he denounced the spoilers of the church as men anathematized, deprived of legal protection and of association with the faithful—who were forbidden to give them bread or water—and, moreover, cut off from the kingdom of God if they should die without rendering full satisfaction to the church which they had wronged.[2]

In all this Charlemagne never abated a jot of his control over the church, which he strengthened that it might be a more

[1] Carol. Mag. Capit. VIII. ann. 803 (Baluz. I. 285-90).—Cf. Capitul. Lib. VI. cap. 370; Lib. VII. cap. 142, 143.

[2] Carol. Mag. Capit. III. incerti anni cap. 3, 4, 5 (Baluz. I. 359).

useful instrument in his hands. In this same year, 803, in a capitulary addressed to his Missi, or Imperial Commissioners, containing a brief summary of matters requiring their attention, he orders them to check the abuse of the powers thus confided to ecclesiastics, by preventing excommunications from being resorted to everywhere and without cause.[1] In 811 he issued another capitulary, which is a series of sharp and searching questions, probing to the quick the excesses and crimes of the church, and among them we find that the delegated power over heaven and hell was already used with effect on the minds of dying and despairing sinners for the purpose of swelling the possessions and revenues of the establishment. He asks whether the world is relinquished by those who seek wealth through every cunning art, by promising happiness in heaven and threatening eternal torture in hell, thus playing on the ignorance of rich and poor alike to gain possession of their estates, to the exclusion of the rightful heirs, causing a notable increase of crime by forcing to a life of robbery and plunder those who were thus disinherited.[2] This was not the only way in which the money value of the Eucharist was speculated on, for other modes were speedily discovered and industriously exploited. By this time, in the stricter kinds of penitence enjoined, the penitent was obliged to live on bread and water.[3] A regulation accordingly was introduced by which

[1] Carol. Mag. Capit. III. ann. 803 cap. 2 (Baluz. I. 277).

[2] Carol. Mag. Capit. II. ann. 811 cap. 5 (Baluz. I. 329–30). This inquisition of the emperor into the shortcomings of the church led to the assembling of five councils in 813. Two of these (Concil. Arelatens. VI., Remens. II.) pay no attention to this special question. That of Tours (C. Turonens. III. can. 51, Harduin. IV. 1030) states that it has made inquiry, and can find no one complaining of being disinherited. That of Chalons (C. Cabillonens. II. can. 6, Ibid. p. 1033) contents itself with a general reproof of such practices, without indicating any special penalty for them; and that of Mainz (C. Mogunt. can. 6, Ibid. p. 1010) promises to amend anything of the kind that might come to the knowledge of its members. The church evidently was not disposed to relax its pious efforts to increase the patrimony of Christ.

[3] Capitul. Add. IV. cap. 83. In 813 the second council of Chalons com-

no one was allowed to invite a penitent to eat flesh or to drink wine without immediately paying a fine of one or two deniers, according to the severity of the penitence thus infringed[1]—which was, apparently, an indirect way of allowing a rich penitent to purchase exemption from the rules. A similar abuse is revealed by the complaint of the council of Chalons, in 813, that a spurious charity was encouraged in those who desired to sin without incurring the penalty of their transgressions.[2]

CHURCH AND STATE.

The death of Charlemagne marks a new era in the history of the church. His support had awakened its ambition, and had armed it with new weapons; while the piety of Louis le Débonnaire rendered him apt to yield to the pretensions which it was prompt to put forward. Charlemagne controlled the thunders of the church; Louis was their slave, and it is hard to overestimate the effect of the spectacle which he offered to an astonished world when, in remorse for the severity with which he had crushed the rebellion of his nephew, Bernard, King of Italy, the master of Europe in 822 appeared before the prelates assembled at the council of Attigny, confessed his sins, asked for absolution through penance, and duly fulfilled the judgment rendered by appearing in public as a penitent.[3]

The triumph of the spiritual power was thus foreshadowed, and under the auspices of such a monarch its progress towards

plains that penitents evaded the prohibition of wine and flesh by contriving dainties agreeable to the palate.—Concil. Cabillonens. II. can. 35 (Harduin. IV. 1037); Cf. Capitul. Add. III. cap. 60.

[1] Capitul. Lib. I. cap. 151.—Reginon. Eccles. Discip. Lib. I. cap. 259.

[2] Concil. Cabillonens. II. ann. 813 can. 36 (Harduin. IV. 1038).—Capitul. Add. III. cap. 61.

[3] Thegan. de Gest. Ludewici Imp. cap. 23.—Eginhart. Vit. Ludov. Pii ann. 822.—Astron. Vit. Ludov. Pii cap. xi.

domination was rapid. As yet the fierce warriors of the age were little disposed to respect the spiritual thunders of the church, and a contemporary ecclesiastic deplores the fact that a large portion of the laity made it a rule to disregard excommunication as utterly as though the priest were a layman.[1] His laborious logic to prove the blindness of this perversity was little adapted to overcome the prevailing hardness of heart, and the power of the state was gradually invoked to lend force to the terrors of spiritual censures. In 819 Louis sought to lead his subjects to submit to episcopal sentences by guarding with a triple fine the life of a man during the performance of penitence[2]—evidently because during that period of probation he was prohibited from bearing arms, and could not protect himself. In 826, also, he published a capitulary which greatly extended the sphere of spiritual jurisdiction, and pledged to it the support of the secular power. For rapine and robbery he decreed not only the temporal punishment of heavy fines and restitution, but added the enforcement of canonical penitence to be publicly performed; while the act, if it had been committed on church property, was pronounced to be sacrilege, and the offender was outlawed until he should have made amends to the satisfaction of the injured church. For blasphemy, the penalty threatened was imprisonment by the secular judge, and public penitence until, by the intercession of the bishop, the offender should be publicly reconciled and readmitted to the church. The lives of ecclesiastics, moreover, were protected by a provision that for a homicide committed on a clerk the criminal was to undergo penitence of the severest character, for life, in a monastery.[3] The same confusion of

[1] Jonæ Aurelianens. de Institut. Laicali Lib. II. cap. xxi.

[2] Ludov. Pii Capit. I. ann. 819 cap. 5 (Baluz. I. 406).

[3] Ludov. Pii Capit. Ingilenheim. ann. 826 cap. 1, 2, 5 (Baluz. 439–40). —To show the change thus wrought, it may be worth while to allude to a judgment of Pope Gelasius (492–496), by which a priest who had killed his bishop was only excommunicated for a year and deprived of the ministry of the altar. He persisted in performing his priestly functions, however, and was thereupon degraded for disobedience.—Gelasii PP. I. Epist. Philippo et Cassiodoro; Ejusd. Majorico et Joanni.

civil and ecclesiastical jurisdiction is shown in a law of 829, by which a man putting away or killing his wife without cause was condemned to undergo public penance, for refusal of which the count of his district was ordered to imprison him in chains until the imperial pleasure could be ascertained.[1]

About this time, also, Lothair I., Louis's eldest son, gave a fresh impulsion to the progress of priestly control over the secular power. Sent in 823 to Italy by his father, he went to Rome, and there Paschal I. solemnly crowned him as emperor, without the knowledge or assent of Louis. This, we may assume, threw him to some extent into the hands of the clerical party, and we therefore need not be surprised to find him, in 824, issuing the first general command to the counts and ministers of justice to enforce by secular proceedings all sentences of excommunication. This decree provides that if any one, for any crimes or offences, shall disregard admonition until he incurs the liability to excommunication, then the bishop shall call to his aid the count of the district, and in their joint names the offender shall be summoned to submit to the bishop. If this is ineffectual, then the royal ban or fine shall be inflicted on him; and if still contumacious, he shall at last be excommunicated. In case the hardened criminal defies this, the count shall seize him and throw him in chains in a dungeon, where he shall lie until he receives the imperial sentence; while, if the offender is the count himself, the bishop shall report him for judgment to the emperor.[2] Thus the thunders

[1] Capit. pro lege habenda ann. 829 cap. 3 (Baluz. I. 452).—Capitul. Addit. IV. cap. 118, 161.

[2] Lothar. I. Capit. Tit. II. cap. 15 (Baluz. II. 219).—Ll. Longobard, II. 54, 1, s. Lothar. XV. (Georgisch, 1218–19; Canciani, I. 196). This was, in another section, applied especially to usurers (Cap. 19—Ll. Longobard. II. 54, 2).

Abuses, apparently, were not long in making themselves felt, for another capitulary of Lothair alludes to bishops and counts who were in the habit of taking bail from persons accused of incest or of withholding their tithes, and then dividing the spoils between them.—Lothar. I. Capit. Tit. V. cap. 41 (Baluz. II. 232).—Ll. Longobard. IV. 3, 10, s. Lothar. II. cap. 1 (Georgisch. 1247–8).

of the church were adopted by the state as part of its ordinary criminal machinery, and all the powers of the state were pledged to support the sentence of the spiritual tribunals.

The scope and the danger of the authority thus successively conferred upon the church were most impressively manifested when Louis was deposed by his sons, after the fatal Field of Falsehood in 833, and Lothair desired to render impossible the restoration of his father to the throne. The sins imputable to Louis were not such as the secular law of that turbulent age could take cognizance of, but the spiritual tribunal could impose penitence for any infraction of moral obligation; the people had been invited by Louis himself, eleven years before, at Attigny, to see the bishops sit in judgment on their monarch; and the decretals of Siricius and Leo I., forbidding secular employment and the bearing of arms to any one who had undergone public penance, were not so entirely forgotten but that they might be revived.[1] Accordingly, when Lothair returned to France, dragging his captive father in his train, he halted at Compiègne, and summoned a council of his prelates to accomplish the work from which his savage nobles shrank. With unfaltering willingness they undertook the odious task, declaring their competency through the power to bind and to loose conferred upon their order as the vicars of Christ and the turnkeys of heaven. They held the wretched prisoner accountable for the evils which the empire had suffered since the death of Charlemagne, and summoned him at least to save his soul by prompt confession and penitence, now that his earthly dignity was lost beyond redemption. Louis submitted—he could not do otherwise—and accepted and signed the confession which they thrust into his hands, the articles of which show the dangerous confusion between moral offences and temporal crimes, so sedulously inculcated by the mediæval casuists, to the immense extension of spiritual jurisdiction. He was guilty of sacrilege because he

[1] Capitul. Lib. VI. cap. 338; Lib. VII. cap. 61, 62.

had not fulfilled the promise of his coronation oath; he was a perjurer and suborner of perjury because, after having parcelled out his empire between his three sons, he had, after the birth of a fourth, made another allotment; he had violated his vows and despised religion because he had once undertaken a military expedition during Lent, and had held a council on Maundy Thursday; and he was morally accountable for all the crimes and devastation committed throughout the empire in the civil dissensions excited by his turbulent sons. With that overflowing hypocritical unction which is the most disgusting exhibition of clerical craft, the bishops labored with him for his own salvation, until, overcome by their eloquent exhortations, he threw himself at their feet, begged the pardon of his sins, implored their prayers in his behalf, and eagerly demanded the imposition of such penance as would merit absolution. The request was not denied. In the church of St. Mary, before the tombs of the holy St. Medard and St. Sebastian, the discrowned monarch was brought into the presence of his son, and surrounded by a gaping crowd. There he threw himself upon a sackcloth and four times confessed his sins with abundant tears, accusing himself of offending God, scandalizing the church, and bringing destruction upon his people, for the expiation of which he demanded penance and absolution by the imposition of those holy hands to which had been confided the power to bind and to loose. Then, handing his written confession to the bishops, he took off sword and belt and laid them at the foot of the altar, where his confession had already been placed. Throwing off his secular garments, he put on the white robe of the penitent, and accepted from his ghostly advisers a penance which should inhibit him during life from again bearing arms.[1] The world, however, was not as yet quite prepared for this spectacle of priestly arrogance and royal degradation. The disgust which it excited hastened a counter-revolution, and when Louis was

[1] Episc. Relat. de Exauctor. Hludow. (Migne's Patrolog. T. XCVII. pp. 659–64).—Agobardi Opp. pp. 319–23 (Ed. Migne).

restored to the throne, Ebbo of Rheims and St. Agobard of Lyons, the leaders in the solemn pantomime, were promptly punished and degraded. Yet the piety of Louis held that the very sentence for the imposition of which they incurred this penalty was valid until abrogated by equal authority, and accordingly he caused himself to be formally reconciled to the church before the altar of St. Denis, and abstained from resuming his sword until it was again belted on him by the hand of a bishop.[1]

During the dreary period of anarchy which filled the remaining years of Louis's disastrous reign, and which was prolonged by the ceaseless dissensions of his descendants, aggravated by the ravages of the Northmen and Saracens, the church had to endure evils uncounted and indescribable. It is no wonder, therefore, that in her defenceless state she sought protection in exaggerating her claims to spiritual dominion, and that she endeavored to awe the lawless nobles, who scoffed at her censures, by claiming more and more the right to invoke the temporal power for their enforcement. Already, in 789, the canons of Ingilram had proclaimed that any monarch or potentate was anathema and accursed in the sight of God who permitted the censures of the canons to be disregarded;[2] and those who were so busy in fabricating the Isidorian forgeries were not likely to lose sight of the importance of thus strengthening themselves by what was left of the central authority. In the capitularies of Benedict the Levite, we therefore find abundant traces of the evils of the time and of the means by which a remedy was sought. As might be expected, the most prominent position is accorded to the wrongs inflicted on the church when her rich and extensive possessions lay exposed defenceless to the cupidity of every petty chieftain who might choose to occupy her lands or gather her harvests. Ac-

[1] Astron. Vit. Ludov. Pii ann. 834.

[2] Ingilramni cap. 80 (Hartzheim Concil. German. I. 258).—Cf. Capitul. Lib. VI. c. 321.

cordingly this sacrilege is denounced with an endless iteration which shows at once the extent of the evil and the inefficacy of the remedy; and the manner in which the royal power is constantly evoked to enforce respect for the anathema which was the church's only weapon of defence, proves how little it was regarded by the rude warriors trained in the bloody civil wars of the period, when any lingering reverence for holy things must have been sadly shaken by witnessing the success of the pagan and infidel invaders, whose blows ever fell heaviest on monastery and cathedral.[1]

The less the church was respected, therefore, the more clamorous became her demands for respect. All who refused canonical obedience to their bishops were declared excommunicate;[2] no one while under the ban was to be allowed to appear before a secular tribunal either as a witness or party to a suit; and if he made light of the anathema he was to be exiled, that he might be powerless to harass the ministers of God.[3] Another passage declares, in the name of the monarch, that if any criminal is contumacious or disobedient to the sentence of his bishop, or priest, or archdeacon, all his property shall be seized by the count and the agent of the bishop, until he submits to canonical penance. If still obstinate, the count shall throw him into a dungeon and keep him in the sternest imprisonment until the bishop orders his release; while if the count neglect or refuse this duty, he shall be excommunicated until he performs it; and if this is insufficient, he shall be deprived of both station and communion, and be brought before the emperor, whose power, conjoined with the episcopal authority, shall in-

[1] See Capitul. Lib. VI. cap. 370, 381, 390, 392, 394, 395, 402, 404, 405, 406, 407, 427, 428, 431; Lib. VII. cap. 275, 409, 411, 420, 421; Addit. 17. cap. 84, etc. For an account of the unbridled rapine to which the church was subjected, see the piteous supplication of the bishops to Charles le Chauve at the council of Verneuil, in 844.—Carol. Calvi Capit. Tit. III. cap. 12 (Baluz. II. 13–14).

[2] Capitul. Lib. VI. cap. 78.

[3] Capitul. Lib. VII. cap. 213.—Baluze cites Pope Stephen in support of this, but I can find no parallel passage in the Pseudo-Stephani Epist.

flict such exemplary chastisement that none shall hereafter dare to commit such offences.[1]

It is evident, indeed, that something besides the terrors of mere spiritual censures were requisite, when even ecclesiastics came to disregard them, and they had to be supplemented or supplanted by punishments which appealed to the senses. Thus drunken clerks were ordered to be coerced either by excommunication for forty days or by corporal chastisement; those who wandered over the country without commendatory letters were to be excommunicated, and, if insensible to this, were to be whipped; and the lazy ones who were tardy in performing their sacred functions had the alternative of excommunication or a beating.[2] A shrewder penalty for such contempt is to be found in a decree which apparently relates to a case in which a man produced a title to some lands claimed by the church. As he disregarded the excommunication launched at him it is declared that he shall forfeit the deed under which he holds, and that any ecclesiastic may appear against him in court and reclaim the lands with all the mesne profits.[3] In fact, amid the turbulence of the period, excommunications were becoming so common that they inevitably lost at least a portion of their moral influence. Thus John VIII., whose pontificate extended from 872 to 882, has left on record 382 epistles, and of these no less than one hundred and fifty allude with more or less directness to the anathema which they inflict, threaten, or refer to. Very few of these exertions of the supreme authority of the Vicar of Christ have any bearing on the interests of religion. The political intrigues of the day, the temporal possessions of the church, or the subordination of the hierarchy are in almost all instances the objects of the

[1] Capitul. Lib. VII. cap. 432; Addit. III. cap. 123.

[2] Capitul. Lib. VII. cap. 218, 269.—Capit. Herard. Archiepisc. Turon. cap. 131 (Baluz. I. 685).

[3] Capitul. Addit. IV. cap. 59.—This is attributed in the text to Gelasius, but such a passage may be looked for in vain among the epistles of that pope.

anathema. How the awful authority over the souls of men was degraded to the level of the pettiest interests is seen when some audacious scoundrels stole the horses of the same pope during his progress through France. He promptly excommunicates the unknown thieves unless the beasts shall be returned within three days, and he takes advantage of the opportunity to include in the curse some knaves who had previously pilfered his plate while staying at the abbey of Flavigny—as he shrewdly suspects with the connivance of the holy monks there.[1] That bishops were not disinclined to follow the example of their chief and to use their control over salvation for their personal benefit is apparent from the treatment of royalty in Wales about this time. Tewdwr, King of Brecknock, profanely stole Bishop Libiau's dinner from the abbey of Llancore, when the angry prelate excommunicated him and exacted an enormous fine as the price of reconciliation; and when Brochmael, King of Gwent, and his family were anathematized by Bishop Cyfeiliawg for some personal offence, the fee for removing the censure was a plate of pure gold the size of the bishop's face.[2] A power so persistently and so ignobly abused requires something more than merely moral force to insure respect and obedience.

While, in the Carlovingian Empire, the church clamored to the state for support and protection, the monarchy, in even worse plight, clung closer to the church, in the vain hope of preserving its rapidly ebbing strength by a union with the spiritual power. Its inevitable policy under the circumstances was to enhance that power as far as possible with a view to curb the rising independence of the nobles. In the wild struggle of contending forces the monarchy virtually disappeared to emerge again in the form of a feudal lord paramount. The church maintained its organization; the powers conferred on it, however useless at the moment, were jealously

[1] Johann. PP. VIII. Epist. 127.

[2] Haddan and Stubb's Councils of Gr. Britain, I. 207–8.

treasured in its archives and became its imprescriptible rights, so that when the reconstruction of society began they were its most efficient weapons in controlling feudal noble and feudal king—a result, unexpected by either party, which lends an interest to the apparently fruitless struggles of the descendants of Charlemagne.

With the partition of the empire there arose a new necessity which soon made itself felt, of guarding against the immunity of criminals who might escape from one kingdom to another. Accordingly, the sons of Louis le Débonnaire entered into conventions providing for the extradition of fugitive malefactors, and in these the spiritual tribunals were amply taken care of. If any one guilty of public crime took refuge in another state to avoid excommunication, or after excommunication to avoid penitence, his bishop was empowered to make direct application to the king of the refugee's new country, who was thereupon bound to make search for him diligently, and when found to deliver him to his bishop that the penitence might be enforced.[1] The bishops thus were recognized by international law as possessed of an independent jurisdiction, which was bounded only by the limits of Catholic Christendom, and they were elevated to the position of public officers whose writs were to be respected abroad as well as at home, without the intervention of the representative of the state. The importance of such a concession to the independence of the hierarchical organization can hardly be overestimated in its results.

When a serf refused to undergo penitence, the bishop was empowered to beat him with rods until he should submit, and his master, if he interfered, incurred not only excommunication but heavy fines to the royal fisc.[2]

[1] Conventus apud Marsnam ann. 851 cap. 5 (Baluz. II. 32).—Conventus apud Confluentes ann. 860 cap. 5 (Ibid. p. 95).—Cf. Synod. Ravennat. ann. 877 can. xi. (Harduin. T. VI. P. i. p. 187).

[2] Carol. Calvi Capit. ann. 853 Tit. xi. cap. 9 (Baluz. II. 39). Ejusd. ann. 868 Tit. xxxviii. cap. 9 (Ibid. p. 141).

The counts and other public officers were directed everywhere to accompany the bishops in their diocesan visitations, and when the prelates were unable to correct offences by excommunication, the civil officials were ordered to exercise the plenitude of the royal authority to reduce the offenders to penitence and satisfaction.[1] So clearly did the duty of the state to enforce excommunication become recognized under the operation of these and similar enactments that, in the sharp letter addressed in 858 by the Neustrian Bishops to Louis le Germanique during his brief usurpation of France, they request him to order the nobles, who by their crimes have incurred excommunication, to render due satisfaction to the churches where they have sinned, so that the bishops may absolve them; and if he or his courtiers have been infected by communing with these criminals, due penitence is indicated for the monarch and his followers.[2]

Year by year the royal power grew less able to control the anarchical elements of society, and, as the strength to enforce the secular law declined, it relied more and more on what little respect remained for the censures of the church. In the Capitulary of Pistes, issued in 862, Charles le Chauve draws a fearful picture of the rapine and desolation which pervaded every quarter of his dominions, and with a brave assertion of the authority which he knew was contemned by every petty chieftain, he ordered that by the first day of the following October all spoliation and robbery and murder should cease. Such malefactors as did not by that time reform and undergo the penitence due for their past misdeeds he commanded to be brought before him, or their possessions to be seized and themselves to be excommunicated by the bishops. He recognized the rising strength of feudalism by holding the nobles responsible for the submission of their vassals and retainers to the penitence to be imposed on them, and if they did not bring

[1] Loc. cit. cap. 10 (Baluz. II. 40, 142).

[2] Carol. Calvi Capit. ann. 858 Tit. XXVII. cap. 13 (Baluz. II. 78).

their men to the bishops for that purpose they were themselves to be excommunicated. Moreover, if any should prove so hardened as to be insensible to the fear of God, contemning the authority of the church and the power of the crown, he proclaimed that they were by the sacred canons cut off from the society of Christians and from the church on earth and in heaven, and that, as enemies of God and the church, they should be persecuted by the royal authority and by all good subjects until driven from the kingdom.[1]

This curious commingling of secular and spiritual punishments, and the prominence accorded to the latter, show the fearful perplexities of the monarch and the desperation with which he sought the aid of the church in the impossible task of resisting the inevitable tendencies of the age. The crown and the mitre had alike proved false to the trust confided to them. They had been weighed and found wanting, and the closest alliance they might form could no longer control the lawless ferocity which their selfishness and greed had allowed to become the dominant element of the time. Still they fought the losing battle as gallantly as though they could expect to win, and year by year Charles leaned more upon his clergy for the support which he could look for nowhere else. In the Edict of Pistes, for instance, in 864, in issuing a new coinage and threatening punishment for its rejection, he instructs his bishops to watch, through their priests, that the penalty is duly inflicted, and to report to him all cases of non-compliance. In renewing, also, the laws against the use of false measures, he adds that offenders, after undergoing the legal punishment, shall be subjected to the further sentence of their bishops, as it is a crime equivalent to usury and denounced by God and the church.[2]

All this proves that the administration of the secular law was becoming so disorganized that Charles could rely upon it

[1] Carol. Calvi Capit. ann. 862, Tit. XXXIV. cap. 3, 4 (Baluz. II. 109–12). Cf. Capit. Tit. XXIII. cap. 7 ann. 857 (p. 61).

[2] Ejusd. Capit. Tit. XXXVI. cap. 15, 20. (Baluz. II. 123–4).

no longer, and that he vainly endeavored to supplement it by means of the clergy. This tendency continued to increase, and twenty years later an edict of his grandson, Carloman, indicates that the hierarchy had become almost the only instrument through which the nominal ruler could hope to influence his subjects. As a preventive of robbery it is ordered that all priests shall offer free hospitality to wayfarers, and shall instruct their parishioners to do likewise, and that supplies shall not be charged to travellers at more than the market price—the priests again being the inspectors to see that the law is obeyed, and to entertain all appeals from travellers complaining of extortion. The same edict contains an eloquent description of the all-pervading rapine and spoliation which devastated the country, and now at length the royal power confesses its utter impotence. The bishops alone are relied upon to cure the incurable by summoning the offenders to repentance and punishing the contumacious by excommunication. There is scarcely a pretence of threatening the incorrigible with the king's authority, but the laity and the public officials are conjured, by the love of God and their fidelity to the throne, to support the bishops when called upon.[1] The rapid progress of decentralization had disintegrated the work of Charlemagne, and his descendant was a king only in name. As the sovereign disappeared, feudalism and the church were left face to face.

Yet to the last the crown asserted its traditional control over the mitre. In 860 Charles le Chauve still undertook to regulate the use of excommunication by forbidding his bishops from employing it without first summoning the offender to repentance and amendment, and calling upon the civil power to enforce the summons. It was only after these formalities had been resorted to and found insufficient that the prelate was at liberty to eject the obdurate sinner from the church.[2] Nine

[1] Carolomanni Capit. ann. 884 Tit. III. cap. 4, 5, 6, 7, 8, 9, 12, 13 (Baluz. II. 195–8).

[2] Carol. Calvi Capit. ann. 860 Tit. XXXI. cap. 6 (Baluz. II. 95).

years later he repeated these commands with additional details; and he ordered further that those who were unjustly condemned by their bishops should appeal to him, when if injustice were proved, the prelate should be amerced according to the laws of Charlemagne and Louis le Débonnaire.[1]

This right of appeal was the necessary consequence of the intervention of the secular power, for the church was as yet not so absolute as to be able to call upon the state for assistance without thereby authorizing the state to investigate the cases for which its aid was invoked. In a modified form, indeed, the royal prerogative had long been held to possess the power of annulling excommunication. In 681, the twelfth council of Toledo deprecates the incongruity of seeing those with whom the king was pleased to associate remain under the ban of the church. It therefore orders that whoever is received and pardoned by the king, and admitted to his table, shall not be refused communion by the church.[2] This rule prevailed extensively and long remained in force. At the close of the eleventh century, Ivo of Chartres includes it in his Decretum as borrowed from the Capitularies (Lib. v. cap. 383), though it is not to be found there. He considers it good law, submits to it himself in one case, and counsels submission to it in another;[3] and a century earlier Gerbert of Aurillac alludes to its being invoked by Arnoul of Rheims.[4]

If, during these civil dissensions and their attendant anarchy, the church suffered fearfully in person and property, it yet had ample opportunity of storing up precedents of the gravest moment for its future supremacy. Its alliance with the state was to enure solely to its own advantage, and its gifts, like the poisoned shirt of Nessus, were destined to plague the receiver.

[1] Carol. Calvi Capit. ann. 869 Tit. XL. cap. 7, 10 (Baluz. II. 144–5).

[2] Concil. Toletan. XII. ann. 681 can. 3.

[3] Ivon. Decret. P. XVI. cap. 344.—Epist. 62, 171. That the custom should remain in force at this period shows that it could coexist with the wildest pretensions of theocratic supremacy.

[4] Gerberti Epist. Supplem. Epist. 1 (Migne's Patrolog. T. 139 p. 265).

Thus, when in 876 John VIII. assumed the prerogative of bestowing the imperial crown on Charles le Chauve, in return for the perilous and delusive honor which he granted, he received a most substantial advantage, for Charles proclaimed the supremacy of the See of Rome, acknowledged its right to exercise pastoral care over all the churches, and pledged himself that it should be obeyed by them in all things.[1] John was not long in stretching to the utmost this indefinite authority, for in 878, when he presided over the synod of Troyes, Sigebod, Archbishop of Narbonne, called his attention to the Wisigothic code, which omitted to provide any special penalty for the sacrilege of spoiling the church, and which, moreover, declared that no court should entertain a complaint for offences not therein enumerated, the consequence of which was that the church was left to the ordinary protection of the law. To remove this incongruity, the pope thereupon issued in his own name an order extending over the Gothic races in Aquitaine and Spain the Carlovingian penalty of thirty pounds of pure silver for all offences of this kind.[2] Yet the man who thus assumed this enormous power over Christendom, had so little real independence at home, that in this same year, 878, we find Lambert, Duke of Spoleto, asserting that the papacy had no right to send envoys abroad without his permission.[3]

From the same transaction between Charles le Chauve and John VIII., there arose another novel precedent, which foreboded the ultimate triumph of the church over the state. Seven years before, when the miserable Lothair of Lotharingia died, in 869, without legitimate issue, his uncles Charles le Chauve and Louis le Germanique had made haste to divide his spoils. His brother, the Emperor Louis II., however, claimed that the kingdom had been bequeathed to him, and his power in Italy made it not difficult for him to secure for his pretensions the support of the papacy. Adrian II. accord-

[1] Synod. Ticinens. ann. 876 cap. 1, 2 (Baluz. II. 163).
[2] Confirmat. Legis Caroli (Baluz. II. 190).
[3] Johann. PP. VIII. Epist. 104.

ingly interfered, threatened with excommunication all who should lay hands on the heritage, or should render allegiance to the usurpers, and wrote to Hincmar of Rheims, ordering him to excommunicate his sovereign if he should dare to disobey the mandate. Hincmar's reply to this assumption of supremacy is couched in terms of scantiest courtesy. The kingdoms of earth, he reminds the pope, are obtained by battle, and not by the excommunications of pope or bishop; the Frankish warriors are not disposed to regard the successor of St. Peter as both king and pontiff, or to admit that he has any control over their allegiance, nor do they believe that their chances of heaven depend upon their selecting their king at his bidding, for an illegal excommunication injures only him who utters it, and it is unseemly in a bishop to deprive a Christian of the sacraments for the purpose of transferring a kingdom from one monarch to another.[1] This was good canonical doctrine, but when Charles, at the death of Louis II., sought the imperial crown, which chanced to be virtually at the disposal of the pope, he was willing to admit all the claims of the church, in the vain hope of acquiring additional support for the precarious dignity; and with blind infatuation he sought and obtained the interference of the papacy in the relations between sovereign and subject. In the Roman synod of 877, which confirmed his election as emperor, Pope John VIII. gratified him by anathematizing with a perpetual curse all who should dare to resist his authority or dispute his title, and the synod unanimously responded "So be it!"[2] Charles gained nothing by thus inviting and acknowledging the supreme jurisdiction of the church over the allegiance of nations, but the precedent which he thus established held good. However much he may at the moment have rejoiced in the additional guarantee of the imperial crown, he found that in effect it availed him little, when the approach of his nephew Carloman at the head of a German army sent him flying homewards

[1] Hincmari Remens. Epist. 27.

[2] Synod. Roman. ann. 877 (Harduin. T. VI. P. I. p. 184).

to perish miserably in a peasant's hut among the Alps, almost before the echoes of the clergy's "Fiat, fiat, fiat!" had died away. For five hundred years afterwards, however, succeeding emperors learned the full significance of the interference of the church between the monarch and his subjects, when they found that the allegiance which could be enforced by excommunication could be abrogated by the same means. What the church could give, the church could take away, and the heedless recipients of her gifts could only hold them on the tenure of obedience.

THE CHURCH AND FEUDALISM.

As the royal authority crumbled and was virtually lost in the anarchy which gave birth to feudalism, the church was left, without protection, to defend itself as best it could from the endless and all-pervading assaults of the local tyrants whose power was the reward of lawless audacity. At the council of Tribur, in 895, there appeared an unfortunate priest whose eyes had been put out by some savage layman. The offender was summoned to make amends for the outrage, but he refused even to come before the council, and treated the power of the assembled bishops with contemptuous indifference. They could do nothing but promulgate a canon deploring the neglect with which the censures of the church were treated, and calling upon the counts to arrest those who when excommunicated disregarded the sentence.[1] It would be asking too much of human nature to expect that men thus subjected to cruelty and wrong should retain the benignant charity of the religion which they professed; and however much their own worldly self-seeking may have contributed to the savage an-

[1] Concil. Tribur. ann. 895 can. ii. iii.

archy of their flocks, yet that barbarism could not but react on their own characters, in the convulsive efforts which they made to preserve themselves and their privileges. This life-and-death struggle and its influence on the character of the ecclesiastical body are fairly illustrated by the circumstances attending the murder of Fulk, Archbishop of Rheims, in the year 900. In 893, Baudoin le Chauve of Flanders had endeavored to get possession of the celebrated and wealthy abbey of St. Bertin, but Fulk managed to forestall him, caused himself to be elected, and refused to surrender it. For seven years Baudoin dissembled his disappointment, and at length, in the year 900, he dispatched a knight named Winemar to Fulk and Charles le Simple to negotiate for the abbey, but Fulk refused to listen to any propositions, and Charles, who owed his crown to Fulk, declined to interfere. Winemar, stung by his ill success, lay in wait for Fulk on his return to Rheims, June 17th, and slew him. His successor Hervey was consecrated without loss of time on July 6th, and the bishops assembled at the ceremony thus excommunicated Winemar, with Everard, Ratfrid, and his other accomplices in the bloody sacrilege—

"In the name of God, and by the power of the Holy Ghost, and the authority divinely granted to bishops by Peter, chief of the Apostles, we separate them from the bosom of holy mother church, and condemn them with the anathema of the eternal curse, that they may have no help of man nor any converse with Christians. Let them be accursed in the city and accursed in the country. Accursed be their barns and accursed their bones; accursed be the seed of their loins and the seed of their lands, their flocks of sheep and their herds of cattle. Accursed be they in their entering and in their outgoing. Be they accursed at home and homeless elsewhere. Let them strain out their bowels and die the death of Arius. Upon their heads fall all the curses with which God through His servant Moses threatened the transgressors of the divine law. Let them be anathema maranatha, and let them perish in the second coming of the Lord; and let them moreover endure whatever of evil is provided in the sacred canons and the apostolic decrees for murder and sacrilege. Let the righteous sentence of divine con-

demnation consign them to eternal death. Let no Christian salute them. Let no priest say Mass for them, nor in sickness receive their confession, nor, unless they repent, grant them the sacrosanct communion even on their death-bed. But let them be buried in the grave of an ass, and rot in a dunghill on the face of the earth, that their shame and malediction may be a warning to present and future generations. And, as these lights which we now cast from our hands are extinguished, so may their light be quenched in eternal darkness."[1]

Before we utterly condemn the hideous ferocity of the curse thus belched forth in the name of the Redeemer, we should give fair consideration to the rage and fear which prompted it, and which justified it as fully as so foul an abuse of powers assumed from God could be justified. That the church was unarmed and defenceless, except in so far as it could by means like this strike terror into the breasts of savages, was shown by the result. The bishops, feeling the impotence of their own wrath, procured in addition for the murderers a special excommunication from the Holy See itself; but Winemar laughed both to scorn, boasted of his deed as a proof of his fidelity to his suzerain, and took no pains to procure absolution, which shows that his lord and his associates paid no heed to the injunctions of the anathema. Nay, more; Fulk had been the tried and trusted friend of Charles le Simple, who owed to him his throne; yet when Baldwin of Flanders claimed of him the coveted abbey, rendered vacant by this murderous deed, Charles dared not refuse it to his powerful vassal, and St. Bertin became hereditary in the House of Flanders, like any other fief.[2]

[1] Baluz. II. 463–4.

[2] Chron. S. Bertin. cap. XX. pp. 1, 3; cap. XXI. p. 1; Folquin. Cartul. S. Bertin. c. 68. It is true that Richerus (Lib. I. cap. 18) chronicles the terrible death of Winemar as a judgment from heaven to repair the injustice of man; but though he is a good authority for the events of the end of the tenth century, the silence of the special historians of the abbey is, I think, sufficient evidence that his story is merely one of the customary legends so numerous at that period when spiritual terrorism was the only protection to which the church could look.

Much may be forgiven to men whose profession forbade recourse to force in an age when force was the only law respected; and yet Charity herself might well stand aghast to see those who represented on earth the Gospel of love unpack their hearts with curses so venomously that they seem enamored of the opportunity to consign their fellow-beings to ruin in this world and to perdition in the next. The clergy themselves, indeed, by their worldly and too often flagitious lives had forfeited the respect of their flocks,[1] and when their censures thus lost effect, it was but natural that they should seek to impress upon sinners by copiousness of malediction the salutary fear which the sacredness of their character could no longer ensure. In the following formula, for instance, there is a richness of imagination and a particularity of detail which show that its author fairly revelled in his power of malediction, and rolled as a sweet morsel under his tongue every torment which he invoked upon his victim. It was not called forth by the exigencies of a supreme occasion, such as the murder of Fulk, but was a general form of malediction for petty thieves and similar malefactors.

"By the authority of God the omnipotent Father, and of the Son, and of the Holy Ghost, and of the sacred canons, and of the holy and unsullied Virgin Mary the Mother of God, and of all the heavenly Virtues, Angels, Archangels, Thrones, Dominations, Powers, Cherubim and Seraphim, and of the holy Patriarchs, Prophets, and all the Apostles and Evangelists, and of the holy Innocents who alone are worthy in the sight of the Lamb to sing the new song, and of the holy martyrs, and the holy confessors and the holy virgins and of all the saints and elect of God, we excommunicate and anathematize this thief, or this malefactor, and we expel him from the holy church of God, that he may be delivered over to eternal torment with Dathan and Abiram and with those who cried to the Lord God, 'Away from us, we wish not to know Thy ways.' And as fire is quenched with water, so may his light

[1] Ratherius of Verona thus explains the habitual disregard of excommunication by the laity of the period.—Rather. Veronens. de contemptu canonum Pars I.

be quenched for ever and ever, unless he repent and render full satisfaction. Amen. Be he accursed of God the Father, who created man; accursed of God the Son, who suffered for man; accursed of the Holy Ghost which cometh in baptism; accursed of the Holy Cross which the triumphant Christ ascended for our salvation; accursed of the Holy Virgin Mary, the Mother of God; accursed of St. Michael, the receiver of blessed souls; accursed of the angels and archangels, the princes and powers, and all the hosts of heaven; accursed of the worthy legion of Prophets and Patriarchs; accursed of St. John, the forerunner and baptizer of Christ; accursed of St. Peter and St. Paul and St. Andrew, and all the apostles of Christ, and the other disciples, and the Four Evangelists who converted the world; accursed of the wonder-working band of martys and confessors whose good works have been pleasing to God; accursed of all the holy virgins who have shunned the world for the love of Christ; accursed of all the Saints, beloved of God, from the beginning even unto the end of the world; accursed of heaven and of earth and of all that is holy therein. Let him be accursed wherever he be, whether at home or abroad, in the road or in the path, or in the wood, or in the water, or in the church. Let him be accursed living and dying, eating, drinking, fasting or athirst, slumbering, sleeping, waking, walking, standing, sitting, lying, working, idling, ——, ——, and bleeding. Let him be accursed in all the forces of his body. Let him be accursed outside and inside; accursed in his hair and accursed in his brain; accursed in the crown of his head, in his temples, in his forehead, in his ears, in his brows, in his eyes, in his cheeks, in his jaws, in his nostrils, in his front teeth, in his back teeth, in his lips, in his throat, in his shoulders, in his upper arms, in his lower arms, in his hands, in his fingers, in his breast, in his heart, in his stomach and liver, in his kidneys, in his loins, in his hips, in his ——, in his thighs, in his knees, in his shins, in his feet, in his toes, and in his nails. Let him be accursed in every joint of his body. Let there be no health in him, from the crown of his head to the sole of his foot. May Christ, the Son of the Living God, curse him throughout His kingdom, and may Heaven with all its Virtues rise up against him to his damnation, unless he repents and renders due satisfaction. Amen. So be it. So be it. Amen!"[1]

[1] Baluz. II. 469–70.—This is the curse of Ernulphus, well known to all Shandeans. Sterne probably obtained it from Spelman (Glossar. s. v. Excommunicatio).

This would seem to exhaust every possible resource of malediction, and yet the infinite variety with which the church could invoke the anger of Heaven upon her oppressors is shown in another excommunication, launched about the year 1014, by Benedict VIII. against some reckless vassals of William II. Count of Provence, who were endeavoring to obtain from the latter the grant of certain lands claimed by the celebrated monastery of St. Gilles. Without being quite as formal and precise in its details of cursing as the foregoing, there is a bold comprehensiveness of imagination about it which befits the supreme head of Christianity, while it is by no means lacking in hearty vigor of imprecation. After excommunicating in general terms and consigning to Satan the audacious men who thus sought to lay unhallowed hands upon the possessions of the church, the pope proceeds—

"Let them be accursed in their bodies, and let their souls be delivered to destruction and perdition and torture. Let them be damned with the damned: let them be scourged with the ungrateful: let them perish with the proud. Let them be accursed with the Jews who, seeing the incarnate Christ, did not believe but sought to crucify Him. Let them be accursed with the heretics who labored to destroy the church. Let them be accursed with those who blaspheme the name of God. Let them be accursed with those who despair of the mercy of God. Let them be accursed with those who lie damned in hell. Let them be accursed with the impious and sinners unless they amend their ways, and confess themselves in fault towards St. Giles. Let them be accursed in the four quarters of the earth. In the East be they accursed, and in the West disinherited; in the North interdicted, and in the South excommunicate. Be they accursed in the day-time and excommunicate in the night-time. Accursed be they at home and excommunicate abroad; accursed in standing and excommunicate in sitting; accursed in eating, accursed in drinking, accursed in sleeping, and excommunicate in waking; accursed when they work and excommunicate when they rest. Let them be accursed in the spring time and excommunicate in the summer; accursed in the autumn and excommunicate in the winter. Let them be accursed in this world and excommunicate in the next. Let their lands pass into the hands of the stranger, their wives be given over to perdition, and their

children fall before the edge of the sword. Let what they eat be accursed, and accursed be what they leave, so that he who eats it shall be accursed. Accursed and excommunicate be the priest who shall give them the body and blood of the Lord, or who shall visit them in sickness. Accursed and excommunicate be he who shall carry them to the grave and shall dare to bury them. Let them be excommunicate and accursed with all curses if they do not make amends and render due satisfaction. And know this for truth, that after our death no bishop nor count, nor any secular power shall usurp the seigniory of the blessed St. Giles. And if any presume to attempt it, borne down by all the foregoing curses, they never shall enter the kingdom of Heaven, for the blessed St. Giles committed his monastery to the lordship of the blessed Peter."[1]

Hardened sinners might make light of these imprecations, but their effect on believers was necessarily unutterable, when amid the gorgeous and impressive ceremonial of worship, the bishop, surrounded by twelve priests bearing flaming candles, solemnly recited the awful words which consigned the evil-doer and all his generation to eternal torment with such fearful amplitude and reduplication of malediction, and, as the sentence of perdition came to its climax, the attending priests simultaneously cast their candles to the ground and trod them out as a symbol of the quenching of a human soul in the eternal night of hell.[2] Still greater, of course, was the effect when the ingenious expedient was invented of so preparing the candles that they would spontaneously go out at the proper moment, as though extinguished by heaven itself.[3] To this was added the expectation, amounting almost to a certainty, that heaven would not wait for the natural course of events to confirm the judgment thus pronounced, but that the maledictions would be as effective in this world as in the next. Those whom spiritual terrors could not subdue thus were daunted by

[1] Benedict. PP. VIII. Epist. 32 (Migne's Patrol. T. 139 pp. 1630–2).

[2] The formula of excommunication was of course recited in Latin, but the bishops were instructed, after reciting it, to translate it into the vernacular for the benefit of the faithful.—Ordo Excom. Sæc. x. (Migne's Patrol. T. 138, p. 1125).

[3] Camerarii Hist. de Fratrum. Orthodox. Ecclesiis in Bohemia etc. p. 71.

the fearful stories of the judgment overtaking the hardened sinner who dared to despise the dread anathema. Long before Otho the Great had lain in his grave a hundred years, after a life and death of publicity inseparable from his position as the leading character of the tenth century, men related with horror how he had violated the laws of spiritual affinity by marrying his gossip, Adelaide, Queen of Italy; how his natural son, William, Archbishop of Mainz, had boldly taken him to task for this incestuous union and had been thrown into a dungeon by the angry father; how, when released, the son had, in obedience to his duty, excommunicated that father at Easter, and solemnly warned him that by Pentecost God should judge between them; how the Emperor disregarded the sentence, and how, on the high feast of the appointed day, in his imperial robes and surrounded by his splendid court, he was assisting at mass, when the avenging Deity summoned him to the judgment-seat, and prelate and noble stood aghast at finding their master dead without a sign.[1] The infallibility of a pope declared that the excommunicate could not obtain victory in battle or prosperity in this world;[2] and if these temporal visitations were insufficient to curb a hardened generation, there was the evidence of the holy virgin Herluca, to whom the secrets of this world and the next were freely revealed, and who learned in one of her visions that the most terrible fire in hell was reserved for those who died unreconciled of excommunication.[3]

It was not difficult, therefore, to add the spice of miracle to the celebrated case of the excommunication of Robert the Pious of France, who committed, in 995, the indiscretion, attributed to Otho the Great, of transgressing the limits of affinity, spiritual and carnal, in marrying his second cousin Bertha, widow of Odo, Count of Blois, whose son he had held in baptism. Already he was regarded in Rome with little favor, for one of the incidents of

[1] Pet. Damiani Opusc. XXXIV. cap. vii.

[2] Gregor. PP. VII. Regist. Lib. VI. Epist. xvi.

[3] Paul. Bernried. Vit. Herlucæ Virgin. cap. 25.

the Capetian revolution had been the deposition and incarceration, in 991, of Arnoul, Archbishop of Rheims, half-brother of Louis le Fainéant, the last Carlovingian, for assisting his uncle, Charles of Lorraine, in an unsuccessful attempt to resist the usurpation.[1] Although the proceedings of the council of St. Basoul had been nominally regular, they were somewhat violent in fact; the immunity of the ecclesiastical body had been violated, but the new dynasty was not as yet secure enough to be magnanimous, and Arnoul languished in prison for six years, while Gerbert of Aurillac occupied his primatial seat in spite of remonstrance. The prelates concerned were summoned to the synod of Pavia to answer for their conduct, but they prudently held aloof; and when Gregory V. ascended the pontifical throne, one of his first acts, in 996, was to suspend them, at a synod held in Rome, and to threaten an anathema on the whole of France. Alarmed at these demonstrations, and anxious about the objections made to his marriage with Bertha, Robert dispatched St. Abbo of Fleury to the pope, in the hope of obtaining terms. Gregory at that time had been driven out of Rome by Crescentius, and the excommunication which he had launched at his enemy had been met by the installation of an antipope; but the little consideration which he enjoyed at home did not abate his tone of command abroad. He was inflexible, and Abbo returned without accomplishing the object of his mission. Hoping to obtain the confirmation of his marriage, Robert yielded. The dreaded Carlovingian was transferred from the dungeon of Orleans to the archiepiscopal throne of Rheims, and Gerbert was ejected, to be gratified with the see of Ravenna, from which in a few years he was elevated to the papacy.[2]

Robert's submission gained him little. The pope who in exile found his thunders so effective was not likely to be less

[1] Acta Concil. Basoliens.

[2] Udalr. Babenb. Cod. Lib. II. cap. 2.—Aimoini Vit. S. Abbon. Floriac. cap. 11–12.—Muratori Annal. d'Italia ann. 997–8.

aggressive when the arms of Otho III. had gratified him with the sight of Crescentius' headless trunk, and of his rival, the Antipope John, blinded, tongueless, and noseless, parading his misery through the streets of Rome, seated backwards on an ass, with its tail in his hands.[1] Hardly had he been restored to the Vatican when he summoned another synod, in 998, the first act of which ordered the separation of the incestuous couple, prescribed for them seven years of penitence, and threatened them with the dread anathema if they should dare to resist the decree. The bishop who had celebrated the marriage, and all the prelates who had consented to it, were, moreover, suspended from communion until they should appear personally at Rome and render due satisfaction for their infraction of the canons. At the same time there was no pretence of dethroning the obstinate king. It was reserved for another Gregory to develop such doctrines into practice; and a request from the synod that Robert should not aid Stephen of Puy, deposed for irregularity of election, shows that no interference was contemplated with the allegiance due to him by his subjects.[2]

Robert's reverence for the church, his zealous performance of all his religious duties, and the humility and generosity of his charity gained for him, even during his lifetime, if we may believe his biographer Helgaldus, the power of working miracles. Such a nature could not but be powerfully impressed with the awful sentence passed upon him by Rome, and the fearful alternative held out to him. Yet his love for Bertha held good against it all. He refused to part with her, and the dread excommunication fell upon them both. Times had changed since, a hundred years before, Knight Winemar and his master Baldwin laughed to scorn the most elaborate cursing that France

[1] S. Pet. Damiani Epist. 21, Lib. I. In these movements church and state were, as usual, inextricably mingled. Gregory's relationship to Otho III., and the audacious design of Crescentius to restore Italy to the domination of Constantinople, lent a sharper edge to the vengeance exacted by the spiritual and temporal heads of Christendom.

[2] Concil. Roman. ann. 998 can. 1, 2, 8 (Harduin. T. VI. P. I. p. 756).

and Rome combined could pour upon them. Robert's bishops hurried across the Alps and made their peace as best they might, and tradition relates that he and his queen, loving not wisely but too well, stood forth as lepers upon whom the curse of Heaven had fallen. Gratitude for past favors, hopes of future benefits, were as nothing when the church had decreed the segregation of the hardened sinner; and courtier and parasite, friend and dependant, fell away from the infected presence of the excommunicate. Two humble servants alone could be found to perform the most menial offices bringing them into contact with their master, and these were obliged to consign to the flames all the dishes used by the royal pair, lest contamination should be conveyed to the other members of the household.[1]

It was impossible that Robert could remain indefinitely under excommunication. Under the second of the House of Capet the royal supremacy was too precarious to endure a violent and long-continued strain, and every motive of personal ambition and state policy counselled submission. Resistance, indeed, would be fatal to all hopes of founding a dynasty; for when, to insure the fealty of the great barons, it was necessary for each king to crown his son during his own lifetime, there could be little hope of transmitting the throne to the offspring of a marriage thus condemned as null and void; and, according to the manners of the age, the child of a concubine would have a better chance than the son of Queen Bertha. Yet Robert clung to his wife with wonderful pertinacity, and he remained for at least two years under the ban of the church before he could resolve on a separation.[2] The unanswerable arguments of state policy, and the gradually increasing conviction of the hopelessness of pro-

[1] S. Pet. Damiani Opusc. XXXIV. cap. 6. It is of course impossible not to suspect Damiani of a little righteous exaggeration in describing what ought to have been, rather than what really occurred.

[2] Some authorities have assumed that the divorce took place almost immediately, but the evidence collected by Dom Mabillon (Bouquet, Rec. des Hist. X. 568–9) seems to me to justify the conclusion that it occurred not earlier than the year 1000, nor later than 1001.

longed resistance, are amply sufficient to account for his final submission, though his biographer assures us that it was brought about by the reckless virtue of St. Abbo of Fleury, who, at the risk of his life, persisted in arraigning the wickedness of the king, in public and in private, until the sinner's resolution gave way, and he put aside the fair partner of his guilt.[1] So simple an explanation, however, of a perfectly natural result was not suited to the purposes of the church, and a miracle was invoked to manifest the anger of Heaven at the incestuous union and at the obstinacy of disobedience with which it was prolonged. Queen Bertha gave birth to a monster—a boy with the head and neck of a goose—and, appalled at this evidence of divine wrath, the unhappy father and mother submitted to the decree of separation, underwent penance, and were reconciled to the triumphant church.[2] The memory of this prodigy was perpetuated in the sight of the people by the statues of the Reine Pédauque—the queen with the goose's foot—which embellished the portals of so many of the churches of France.[3]

Even yet the watchful care of Heaven was not exhausted, and for many years it kept guard over the results of the victory. About fifteen years after marriage with his second wife, Constance of Provence, Robert made a pilgrimage to Rome, and was followed by Bertha, who still hoped that she might persuade the successor of St. Peter to restore her to her husband. When Constance heard of this desperate venture of her unhappy rival, she was consumed with anxiety lest it should prove successful, till at length in a vision she saw a man of venerable aspect, who assured her that she would be soon relieved of her grief, and, in answer to her inquires, informed her that he was a bishop named Savinian. Before the third day was over, the king unexpectedly returned, as loving as ever; St. Savinian, a martyr till then lying unknown and unhonored in the cathedral of Sens, was gratified with a splendid shrine,

[1] Helgaldi Vit. Roberti Regis cap. XVII.

[2] S. Pet. Damiani loc. cit.—Frag. Hist. Franc. (Bouquet, X. 211).

[3] Dissert. sur la Reine Pédauque (Bullet, Mythologie Française).

and the lucky clerk who had been able to explain her dream, and direct her to the relics of her comforter, in due time became Bishop of Orleans.[1]

A cause which Heaven thus manifestly made its own could not fail to prosper, and when the Franconian emperors had raised the papacy out of the mire into which is had been plunged by the House of Tusculum, the popes were prepared to exert their supremacy over princes and peoples with more energy than ever. For this they had full opportunity in the growing desire for law and order developed in the gradual reconstruction of European society as it emerged from the anarchy consequent upon the fall of the Carlovingian system. Christendom was no longer ravaged by the Hun, the Saracen, and the Dane; feudalism was establishing a recognized code of jurisprudence, which, rude as it was, yet gave in theory to every man a place in the body politic, and rights which might be vindicated according to a settled form of procedure; and some limitations were even beginning to be placed on the perpetual scourge of the petty seigniorial wars. As the elements of human society were thus painfully developing themselves into an organized system, the vast and indefinite claims of the church presented in the False Decretals, and partially recognized in the expiring efforts of the later Carlovingian legislation, were pressed with unfaltering vigor by the able men who occupied the pontifical throne after the middle of the eleventh century. It is no wonder that in such a state of things the trained and disciplined intellects of the church had a vast advantage over the rude intelligence of the feudal nobles. With a unity of purpose that made all its members work to a common end, and with a perseverance that no discouragement could baffle, the church pursued its aims undeviatingly. Where so many rival interests were ever seeking each other's destruction, it could always find an ally whenever it met with serious

[1] Odoranni Chron. Continuat. (Bouquet, X. 166).

opposition; and that ally invariably found, sooner or later, that implicit obedience to its pretensions was rigorously exacted as the price of its assistance. Thus skilfully using the antagonism of conflicting interests to break down each in turn, it succeeded in moulding the plastic elements of civilization into a theocracy such as the world had never before witnessed.

This process is fairly illustrated by the vicissitudes of the protracted quarrel between Henry IV. and the papacy, which show how the church carried on the apparently unequal contest, how it made use of the passions and ambitions of that turbulent time, and how terribly efficient was its single spiritual weapon—excommunication.

The vigilant and resolute Emperor Henry III. had worn out his life in the effort to enforce order among his savage feudatories. His early death left his son, Henry IV., an infant five years old, whom the wise caution of the father had crowned as his successor a year previous. Removed, a few years later, by a conspiracy between prelate and noble, from the tutelage of his mother Agnes to that of Albert the Magnificent, Archbishop of Bremen, the youth grew up with little training in wisdom or self-control, even if his passions were not purposely led astray by those who found their account in rendering him unfit for his lofty station.[1] The plot, moreover, which had displaced the Regent Agnes, revived all the old ambitions which Henry III. had so sternly repressed; and when the young monarch's majority was declared, in his sixteenth year, he found himself without power or friends, confronted by a horde of turbulent princes who had sedulously taught him to regard them as his enemies. Forced by them to marry Bertha of Susa, he not unnaturally, in spite of her

[1] Anno, Archbishop of Cologne, was canonized for the leading part which he took in the abduction of Henry IV. from his mother, but it was not without opposition that he was enrolled in the catalogue of saints. He was regarded by many as simply a traitor, until the miracles which accompanied the translation of his body proved his sanctity.—Cæsar. Heisterbach. Dial. Mirac. Dist. VIII. c. lxix.

beauty and virtues, regarded her as the badge of his dependent position, and three years later he essayed to repudiate her. An assembly convened at Worms in 1069 received the suggestion with more than coldness, and postponed its discussion for six months. When the adjourned Diet met again at Mainz, a legate of the pope was already there to prohibit the consummation of the project, and that legate was Peter Damiani, who was not likely to render his mission more acceptable by the manner of its discharge. We have seen how the church acquired jurisdiction over the subject of marriage, and all history, from the time of Lothair and Teutberga to that of Henry VIII. and Katharine of Arragon, shows the immense influence which it thus obtained over the affairs of nations and of individuals. Damiani, accordingly, rebuked Henry without ceremony before the princes of the empire, and in a manner the most insulting to his pride as a man and his dignity as a monarch pronounced his project inadmissible, with the threat that if he persisted in it, he should vainly ask the imperial crown at the hands of the pope.[1] Thus humiliated and defeated in his dearest aspirations, Henry retired with rage in his heart, prepared to regard the church as an enemy to his person, as he had long found it an enemy to his power.

In 1073 the stern and vigorous Hildebrand succeeded to the pontifical throne, and lost no time in proclaiming war to the knife with the two pervading corruptions of the church—simony and the concubinage of the clergy. For some years Henry, who was maintaining a desperate struggle for life with his powerful and turbulent vassals, preserved the most friendly relations with the new pontiff, whose moral support was essential almost to his existence. At length, however, Gregory's reforming energy brought the two into unavoidable collision. Simony was universal. From the highest to the lowest ecclesiastic, every piece of preferment, and almost every ministerial function, was bought and sold more or less openly. Since the death of Henry III. this demoralizing traffic had been shame-

[1] Lambert. Hersfeld. ann. 1069.

lessly prosecuted throughout Germany, for which Henry IV., as monarch, was nominally responsible, though in his utter powerlessness he had been helpless to prevent it, and the sordid gains had passed into other hands. Gregory VII., who for more than twenty years had been the leading spirit in the papal court, had had ample opportunity to note how impotent were the ordinary agencies of ecclesiastical discipline to eradicate this consuming evil, and he apparently arrived at the conclusion that, so long as the secular authorities enjoyed the privilege of conferring ecclesiastical benefices, it would be impossible to prevent their sale, direct or indirect. Having once reached this conviction he was not the man to shrink from the means, however violent, that seemed likely to effect a radical cure. In a preceding essay we have seen how this right of investiture had for five hundred years been claimed and exercised by the sovereign with scarcely a question; and the immense extension of church property had by this time rendered the hierarchy an important portion of the feudal system, which could not be rendered independent of the lord paramount without striking an almost fatal blow at his power. Yet Gregory did not hesitate abruptly to abrogate the royal authority over the fiefs of the hierarchy without consultation or negotiation with those whose time-honored rights he abolished by a single word. That they did not submit without a contest was natural, and the portentous question of the investitures which he thus aroused filled Christendom with turmoil and bloodshed for many long and weary years.

In February, 1075, Gregory assembled a synod in Rome, which adopted a canon forbidding for the future any ecclesiastic from receiving a bishopric, abbacy, or other preferment from the hands of a layman. All investitures thus conferred were declared null and void; the recipient was excommunicated, and the donor, whether emperor, duke, marquis, count, or other potentate, was involved in the same punishment.[1]

[1] Hugon. Flaviniacens. Chron. Lib. II. ann. 1074.—Cf. Pagi Critica ann. 1075, No. 1.

By this one audacious stroke Gregory hoped to secure the independence of the church, so necessary to its unity and purity; and having once advanced the claim as an imprescriptible right, he was prepared to stand by it with all his indomitable pertinacity, regardless of opposition and careless of consequences.

This defiance of the temporal power chanced to occur at a singularly inopportune moment. During the spring and summer of that year Henry succeeded in uniting under his banner enough princes to undertake a campaign against the chronic revolt of the Saxons, and the bloody victory of Hohenberg enabled him to feel for the first time that he was really a king. In the flush of his successes, with the Saxon princes, who had so long bearded him, confined in his dungeons, the support of the papacy seemed no longer necessary to save him from destruction, and he was little disposed to submit to these new pretensions, so arrogantly claiming to despoil him of the rights uninterruptedly enjoyed by all his predecessors. Still he shrank from an open rupture, and contented himself with quietly disregarding the papal edict. To gain the support of Gozelo, Duke of Lower Lorraine, he gave the bishopric of Liège to Henry, a canon of Verdun, and a near relation to the duke;[1] and his conduct with regard to the bishoprics of Italy was destructive to a cause dearer than perhaps any other to the heart of Gregory. For nearly twenty years the Milanese church had been distracted with bloody factions arising from the papal efforts to deprive its clergy of the privilege of marriage; and at this moment Azzo, the archbishop recognized by the popes, was a refugee in Rome, while a rival archbishop, Gotefrido, also shut out from Milan, was carrying on a desultory warfare in the neighborhood. The city, moreover, lay under an interdict launched by Gregory himself in 1074. The effort to enforce this interdict at Easter, 1075, led to a bloody battle in the streets, in which the military leader of the

[1] Lambert. Hersfeld. ann. 1075.

papalists was slain; whereupon the people, tired of the ceaseless broil, and disregarding both their archbishops, sent a deputation to Henry, asking him to appoint a third. This he promptly did, in the person of Tedaldo, who maintained possession of the see until his death, in 1085, exchanging excommunications with Gregory, and proving the most dangerous opponent to his enterprises.[1] Henry could have done nothing more aggravating than this to the personal pride or more damaging to the politico-religious aspirations of the pontiff. The bishoprics of Fermo and Spoleto, moreover, becoming vacant, Henry filled them, as a matter of course, without even asking the assent of Rome; while the rich German abbeys and prelacies which fell in were occupied by his nominees, according to ancient usage.

These irreconcilable pretensions could have but one result, and Gregory was not backward in provoking the inevitable conflict. Hardly able to maintain himself in Rome amid the agitations which pervaded the whole of Italy, he yet felt serenely secure in the protection of Heaven and the possession of irresistible power over the souls and consciences of men. Towards the close of the year 1075 he therefore addressed an epistle to Henry which is a masterpiece of the peculiarly exasperating style in which the church was wont to inflict the cruelest blows in the guise of the most paternal care for the salvation of a sinner. Henry was informed that he had incurred excommunication for not removing excommunicates from his court, but that he could still obtain pardon by obedience and by the performance of such penance as might be prescribed for him. His promises of filial respect for the church were contrasted with his action in the cases of Milan, Fermo, and Spoleto, which was pronounced illegal and void; the decree of the recent council respecting investitures was referred to and declared to be unalterable, but he was invited to send envoys to Rome, to see whether some device could be

[1] Arnulf. Gest. Episc. Mediol. Lib. III. cap. 28; Lib. IV. cap. 2, 3, 4, 5, 9.—Landulf. Senior. Lib. III. cap. 29; Lib. IV. cap. 2.

adopted to render its enforcement less unpalatable; and, finally, he was warned to compare his own transient glory with the infinite power of Heaven, and cautioned not to allow his pride at his victory over the Saxons to blind him to the duty which he owed to God, lest, like Saul, he might find it to cost him his throne.[1]

Henry was holding his splendid Christmas court at Goslar, after the ancient fashion of the emperors, when Gregory's legates presented to him this portentous missive. It could only seem to him a piece of insane and gratuitous insolence. In Germany he knew that the clergy, from the lowest to the highest, were in a state of almost open hostility to Rome on account of Gregory's determined efforts to deprive them of their wives and of the illicit gains of simony. In Italy he saw that, to the South, Robert Guiscard, being under excommunication, was apparently a mortal foe to the pope; in Rome itself Gregory's life had only been preserved as by a miracle from the audacious attempt of Cencio;[2] while to the North the Lombard clergy, headed by Tedaldo of Milan, the second prelate of Christendom, were arrayed in open schism, and treated repeated excommunications with contempt. Himself, on the contrary, he believed to have at length overcome the enemies who had so long baffled him. He was at last a king, not only in name but in reality, with all Germany submissive at his feet. When therefore the legates pursued their mission by summoning him to trial at a council to be held in Rome on the 22d of the approaching February, with the threat that if he failed to appear he should be cut off from the church with the dread anathema, his indignation knew no bounds at so novel a pretension of supremacy. The legates were driven from the royal presence with insult and contumely; and Henry hastily summoned all the prelates of Germany to meet in council at Worms on the 1st of February, to consult as to the

[1] Gregor. PP. VII. Regist. Lib. III. Epist. 10.
[2] Paul. Bernried. Vit. Gregor. VII. cap. 5.

deposition of a pope who could so mistake his position and exceed his powers.[1]

The assembly met at the appointed time, and adopted a letter addressed to Gregory, stigmatizing his election to the papacy as irregular and illegal, and recounting the various ill-deeds and arbitrary usurpations by which he was endeavoring to reduce the church to slavery and had succeeded in filling it with confusion and revolution. It is curious to observe that, in thus formally withdrawing from his obedience, no mention is make of his attack upon the king, all the reasons alleged being purely the griefs of the church and the scandals imputed to his daily life.[2] This letter was signed individually by all the prelates, although it is impossible to tell how many did so willingly, and how many under compulsion; certain it is that not a few lost no time in secretly communicating with the pontiff, assuring him of their unalterable fidelity and asserting that the fear of imminent death alone had forced their assent to a document so abominable.[3]

Ignorant or unmindful of this hidden disaffection, Henry rushed forward to the conflict. In an angry letter to Gregory, he called upon the pope to come down from the sacred throne which he defiled, and promised that shortly he would preside over the election of another pontiff who would fitly represent the church. Envoys were sent with copies of this to the schismatic prelates of Lombardy, who eagerly subscribed to them; but the messenger sent in the name of all to lay these documents before the synod of Rome and to summon the prelates there assembled to wait until Pentecost for the new pope

[1] Lambert. Hersfeld. ann. 1076.—Goldast. Const. Imp. I. 235–6.

[2] Goldast. I. 237.

[3] Annalista Saxo ann. 1076.—Paul of Bernried (Vit. Gregor. cap. vii. No. 56) declares positively that all who hesitated were threatened with death; while Lambert of Hirschfeld (Annal. ann. 1076) asserts that all signed willingly, except Adalbero of Wurzburg and Hermann of Metz—whose names however are appended to the document as printed by Goldast.

to be nominated by Henry, barely escaped with his life, at the earnest interposition of Gregory himself.[1]

While Henry, in the fancied plenitude of his power, was thus disposing of the pontifical throne in anticipation, Gregory felt sure of his game. Far better than the king he knew the mad ambitions and the sullen hate which devoured the princes of the empire, and which a word from him could rouse to destructive activity. That word was spoken. After excommunicating again all the schismatic bishops of Lombardy and significantly selecting Siegfrid of Mainz as the only German prelate to be assailed, the Roman synod called upon the pope not only to cut off the impious Henry from the church, but also to deprive him of his kingdom.[2] Nothing loth, Gregory promptly fulminated the sentence which marks a new era in the relations between church and state. In its calm and self-reliant dignity it affords an instructive contrast to the ferocious maledictions of Hervey of Rheims and Benedict VII.

"O blessed Peter, prince of Apostles, we pray thee bend thy holy ears to us and hear me thy servant whom thou hast nourished from infancy and to this day hast preserved from the wicked who have hated and hate me for my fidelity to thee. Thou art my witness, and my lady the Mother of God, and the blessed Paul thy brother, and all the saints, that thou didst place the government of thy holy Roman church in my unwilling hands, and that I did not force myself into thy seat, but rather wished to end my days in pilgrimage than by worldly means to seize thy place. Therefore I believe that it has pleased and still pleases thee, through thy grace and not through my works, that the Christian people specially committed to thy care shall obey me in thy stead, and by thy grace the power is granted to me by God of binding and of loosing in heaven and on earth. Strengthened with this faith, for the honor and defence

[1] Annalista Saxo ann. 1076.—At the council of Worms, Cardinal Hugo, then under papal excommunication, was present, as the representative of the Italian church, and assured the German prelates that all Italy was anxiously awaiting the expected signal to throw off Gregory's hateful yoke. —Paul. Bernried. Vit. Gregor. VII. cap. vii. No. 56–9.—Lambert. Hersfeld. ann. 1076.

[2] Paul. Bernried. op. cit. cap. vii. No. 62.

of thy church, in the name of the omnipotent God the Father, and of the Son, and of the Holy Ghost, and by thy power and authority, I remove from Henry the King, son of Henry the Emperor, who with unheard-of pride has risen against thy church, all the government of Germany and Italy, and I absolve all Christians from the oath which they have taken or may take to him, and I prohibit them from obeying him as king. For it is proper that he who seeks to diminish the honor of thy church should himself lose the honor which he seems to possess. And since he, as a Christian, has disdained to obey the Lord and to return to Him, whom he has abandoned by communing with excommunicates and by despising the warnings which, as thou knowest, I have given him for his own benefit, and by separating himself from thy church in the vain attempt to divide it, in thy name I bind him in the bonds of the anathema, that all the nations may know and learn that thou art Peter, the corner-stone on which the Son of the living God hath built His church, and that the gates of hell shall not prevail against thee!"[1]

The power of dethroning a king, thus for the first time assumed and exercised, was founded upon some conveniently interpolated epistles of Gregory the Great, apparently manufactured in the time of Charles le Chauve, in which, granting privileges to various religious and charitable foundations in France, he is made to threaten with the loss of dignity and power any monarch or potentate who may presume to infringe their rights.[2] And here another of the forgeries came in with singular efficacy, for a capitulary of Louis le Débonnaire had been fabricated at some unknown period, decreeing that any one incurring excommunication should be placed under ban, and that if he remained unreconciled for a year and a day, his possessions should all be confiscated and himself exiled or imprisoned.[3] This the piety of succeeding ages had accepted and erected into a law imposing outlawry on any one remaining

[1] Concil. Roman. III. ann. 1076 (Harduin. T. VI. P. I. p. 1566).

[2] Gregor. PP. I. Regist. Lib. XIII. Epist. 8, 9, 10; Append. Epist. 4 (Ed. Benedict.). Cf. Gregor. PP. VII. Regist. Lib. IV. Epist. 23.—Berthold. Constant. Annal. ann. 1076.—Annalista Saxo ann. 1076.

[3] Ludov. Pii Capit. Tribur. ann. 822 cap. 6 (Baluz. I. 426–7).

thus cut off from the church for a twelvemonth and a day.[1] The practical application of this rule gave enormous power to the church, and its bearing on the case of Henry was not long in becoming manifest.

In Italy, the effect of Gregory's fulminations was imperceptible. The bishops whom he anathematized quietly assembled at Pavia, soon after Easter, under the leadership of Wiberto, Archbishop of Ravenna, and responded by a counter excommunication.[2] Familiarity had bred contempt, and the Italians knew too much about the papacy to care much for its censures, unless they were supported by a secular power competent to extort respect. When even St. Peter Damiani, not long before, had felt himself obliged to remonstrate with Alexander II., on the constant abuse of the anathema by the papal court,[3] it was not likely that the Lombard schismatics would pay much heed to the new fulmination which only added another to its innumerable predecessors. In Germany, however, the case was widely different. The empire was a tinderbox, awaiting only a spark for an explosion, and that spark Gregory had resolutely applied. Twice before the powerful Rodolph of Suabia had deemed himself on the point of supplanting Henry, and now, at last, his time seemed to have come.

The honest German mind regarded a papal excommunication with a horror very far removed from the indifference of the Italians, and its effect throughout the empire was decided and immediate. Men repeated with blanched lips how William, Bishop of Utrecht, the trusted adviser of Henry, became at once an awful example of the punishment attendant on the sacrilege of which he was guilty. Some related that when, at Easter, Henry had ordered him to retort upon Gregory the excommunication, and he had obeyed, the Host which he took during the impious ceremony turned to fire within him, and he

[1] Bonizo. Lib. ad Amicum Lib. VIII.

[2] Bonizo. loc. cit.

[3] S. Pet. Damiani Lib. I. Epist. 12.

expired with a foretaste of the endless torments awaiting him. Others declared that he had only derided publicly the excommunication under which both he and Henry labored, but that this was sufficient to call down upon him a mortal disease, during which visions of devils extorted from him a confession of his unpardonable sin, and he miserably perished, unhousselled and hopeless of salvation. It chanced that a number of Henry's supporters died within a short time, and similarly exaggerated accounts of their deaths were industriously circulated.[1] Stories such as these, however lacking in proof, exercised a powerful influence over the popular feelings, of which Henry's enemies —and he had few friends—were not slow in taking advantage.

Suddenly the Saxons arose in a fresh rebellion, and Henry found that the princes of Southern Germany, far from aiding him, were weaving new conspiracies. Udo of Treves, fresh from Italy, set the example of avoiding the contamination of associating with an excommunicate, and his example was contagious. One after another the king's friends fell away, declaring that they could not risk their salvation by intercourse with him. His summons to the princes and prelates of the empire to meet him in council were disregarded, and threats and entreaties were alike powerless.[2]

A despairing and fruitless expedition against the Saxons brought on him new humiliations, while the princes of the empire counselled together as to the speediest and most effectual plan for his removal. A diet was agreed upon to be held at Tribur, October 16th, under the presidency of papal legates, to arrange for his formal deposition and the election of a successor. When the assembly met, the legates produced a profound impression by refusing to commune with any one who had communicated with Henry, until they should undergo penance and receive absolution. Meanwhile Henry, from Oppenheim on the opposite bank of the Rhine, sent propositions of submission,

[1] Hugo. Flaviniac. Chron. Lib. II. ann. 1080.—Lambert. Hersfeld. ann. 1076.—Annalista Saxo ann. 1076.

[2] Lambert. Hersfeld. ann. 1076.

each more self-abasing than the other, but they were coldly rejected, the princes replying that, bound by their oaths of allegiance, they had borne with his crimes until released by the action of the pope, and that now they no longer regarded him as their sovereign. Hastily collecting some troops, he meditated casting all on the hazard of an attack, when terms were offered which he eagerly accepted. He was to abandon his few remaining friends and live privately at Speyer, abstaining from entering a church, until another assembly, to be held at Augsburg, February 2d, 1077, under the presidency of Gregory himself, should try him for the offences whereof he was accused. He was warned, moreover, to procure the removal of the excommunication, for if he allowed the twelvemonth from February, 1076, to expire, he would fall under the operation of the law.[1]

Gregory, meanwhile, had admirably played his part. In dignified silence he allowed the tempestuous elements which he had let loose throughout Germany to do their inevitable work. He desired the abasement of Henry, but it was no part of his plans that the monarch already powerless should be succeeded, without his intervention, by one who might be able to maintain the supremacy of the empire. With consummate art, therefore, on September 3d he had addressed an epistle to the Germans, commanding them to show mercy rather than strict justice to the sinner. If he manifested sincere repentance and willingness to amend his ways, they were to smooth his path. If, on the other hand, he proved obdurate, then might they proceed to elect another in his place, who, it was to be hoped, might prove worthy of recognition by the Apostolic See.[2] Gregory thus, by a single step, placed himself as the judge and arbiter of the two factions, assuming over both a supremacy which under the circumstances neither dared dispute. Distasteful as this unquestionably was to the ambition of the

[1] Annal. Saxo ann. 1076.—Lambert. Hersfeld. ann. 1076.

[2] Gregor. PP. VII. Regist. Lib. IV. Epist. 3.

revolted princes, they had no choice but submission, and it was doubtless owing to Gregory's instructions to his legates that the diet of Tribur, in place of electing an emperor, was forced to content itself with a postponement which placed the final decision in the hands of Gregory himself.

In accepting the conditions imposed on him, it became of the last importance to Henry to obtain absolution in advance of the assembly of Augsburg. After the date set for the meeting, but three weeks would remain to him of the year of grace, and it was manifestly within the power of the insurgent princes to protract the proceedings long beyond the fatal anniversary. His decision therefore was at once taken to hasten himself to Italy, where, face to face with his excommunicator, he might hope to come to terms. His preparations were soon made. His wife, the faithful Bertha whom he had sought to repudiate, with their infant Conrad, then scarcely in his third year, joined him at Speyer, and they started on their dangerous pilgrimage. In anticipation of such an enterprise, Rodolph of Suabia, Welf of Bavaria, and Berthold of Carinthia had closed all the passes of the Alps through their territories, and he was forced to take the longer and more difficult route through Savoy by Mount Cenis. His Christmas, spent at Besançon, was in gloomy contrast with that of the previous year. Then, in his splendid court at Goslar, he imagined himself the unquestioned ruler of Germany, and meditated revendicating the rights of the empire over the haughty theocracy of Rome. Now, practically throneless, he was eagerly seeking, as a last chance of salvation, to move the pity of the man who had by a single word caused his downfall. But one noble, and he of obscure extraction, attended him on his weary pilgrimage, and with difficulty had he collected the moderate sum requisite for the expenses of the journey. Reaching the territory of his wife's mother, Adelaide, Marchioness of Ivrea, a new difficulty awaited him. He was received with due honor, but was told that he would not be allowed to pass unless he ceded five contiguous bishopries to the cupidity of his brother-in law. Time

pressed, January was already upon him, and after a hurried negotiation he abandoned a valuable territory as the toll of the inhospitable mountains. Nature, moreover, seemed to vie with man in closing the door of reconciliation on the unfortunate excommunicate. The winter was severe beyond the memory of man. From Martinmas till April the frozen Rhine could bear the weight of horse and rider, and the roots of the vines were killed in the solid ground. Blockaded with snow and ice, the pathless mountains seemed to offer an impenetrable barrier. As there was no footing for beasts, the feet of the horses were tied, and they were dragged over the snow, a process which few survived. The men of the party, supported by hardy mountaineers, clambered through snow-drifts and slipped and slid down fearful declivities, while the queen and her attendants were securely wrapped in ox-hides, and were dragged with ropes along the edge of precipices and over rugged peaks.[1]

Arrived in Italy, all was changed as if by magic. To the Lombards, Henry was not the discrowned excommunicate, but the long-expected monarch under whose leadership they hoped for domination and revenge on Rome. Eagerly they flocked around him with a cordial welcome, and in a few days he found himself at the head of a formidable army. His misfortunes were too recent, however, for him to indulge in illusions, and if for a moment he dreamed of treating with Gregory as a sovereign, he promptly dismissed the idle notion. Meanwhile the pope had set out from Rome to be present in Augsburg at the appointed day, but hearing that Henry was advancing with a considerable force, he halted and threw himself into the stronghold of Canosa, with the friendly Countess Matilda. Thither hastened such of the excommunicated bishops and nobles of Henry's party as had succeeded in penetrating through the guarded passes of the Alps, and were admitted to absolution after a somewhat severe trial of the sincerity of their repentance.[2]

[1] Lambert. Hersfeld. ann. 1077.

[2] Ibid.

Henry himself lost no time in sending to the pope such mediators as seemed likely to prove most efficient, but Gregory at first replied coldly that he would only adjudge the matter at Augsburg, as had been agreed upon. After much persuasion, however, he relented so far as to permit the king to come to Canosa, with the promise that if he showed evidence of real contrition he might be admitted to expiate his sins by implicit obedience to the church. Eagerly clutching at this doubtful mercy, Henry appeared before the triple walls of the castle on January 25. The next day he was admitted within the second wall, and there, barefoot and fasting as a penitent, he stood in the snow from morning to night. A second and a third day he was exposed to the same proof, humbly awaiting the message of the pontiff. Admitted to the presence on the fourth day, he accepted without hesitation the terms dictated to him, rigorous as they were. The pope was to convene an assembly of the German princes, and there hear their accusations and Henry's defence, and the latter was to be restored to his kingdom, or be declared forever incapable of the crown, according as Gregory might decide by the laws of the church. Meanwhile he was not to wear the insignia, or to claim royal honors, or execute any functions whatever of government; he was to dismiss the faithful followers whose evil counsel had led him into crime; and if he should justify himself sufficiently to be restored to the throne, he pledged himself to be thereafter in all things obedient to the Holy See. Finally, the absolution thus obtained was merely provisional, and a failure strictly to observe any of the conditions imposed would *ipso facto* renew the excommunication.[1] Such were the terms on which Henry at last was admitted to the sacrament.

It would be wearying to follow out the details of the struggle which for thirty years longer Henry maintained with such varying fortune, nor would we learn therefrom the development of any new principles. At a single bound Gregory, with

[1] Lambert. Hersfeld. ann. 1077.

equal skill and audacity, had improved his opportunity to elevate himself to the position of the recognized suzerain of Christendom. The principles which he advanced, and which both parties were forced to admit, gave to the church the right to intervene between the monarch and his lieges, and placed at the discretion of a single man the corner-stone on which was based the whole feudal system—the oath of allegiance and fidelity. The simple anathema thus had become as potential in this world as it was held to be in the next. It was the most formidable engine of temporal as well as spiritual power, and no claim of domination would seem to be too extravagant for him who was commissioned from on high to control it.

It is true that these results were not practically enforced without further resistance. The vicissitudes of Henry's adventurous career afford ample evidence of the repugnance with which the savage feudal noble submitted to the unarmed priest; but the precedent was made, and with the persistency of the church its final triumph was only a matter of time. In March, 1077, Henry saw the Diet of Forchheim endeavor to supplant him by the election of his brother-in-law, Rodolph of Suabia, who had long been intriguing for the vain honor; and Gregory, whom Henry's relations with the Lombards could not fail to disgust, lent his countenance to the proceeding, without absolutely committing himself. Thus balancing between the two rivals, Gregory still endeavored to hold the fate of the empire in his hands, while Henry, returning across the Alps, found no difficulty in obtaining possession of all Southern Germany, and driving his competitor into Saxony. The partisans of Rodolph were bitterly disappointed at this exhibition of papal policy, and addressed to Gregory a letter expressing, with scant respect, their surprise at his tergiversations, and holding him responsible, as in truth he was, for the ferocious war which ravaged every corner of their country.[1]

[1] Saxonum Epist. in Greg. PP. VII. Epist. Extrav. (Migne's Patrol. T. 148 p. 746).

For three years this state of horrors continued, until Gregory's position became no longer tenable. At the synod of Rome in 1080 he therefore formally renewed the excommunication of Henry, and graciously bestowed the empire on Rodolph, who had obediently renounced all claim to the investitures.[1] Henry had learned much during his sojourn in Italy, and the equivocal policy of Rome had developed the ideas of the Teutonic mind, so that for once the thunders of the church proved futile. Henry assembled at Mainz the bishops of his party, and, finding that he could rely upon them, let loose the passions of the Lombard prelates, who promptly assembled at Brixen, deposed Gregory with a declaration that covered him with scandalous reproaches, and elected Wiberto of Ravenna to the perilous dignity of Antipope.[2] The death soon after of Rodolph, who fell in the victory of Volcksheim, seemed to render the verdict of heaven against Gregory, and Henry followed it up by an Italian expedition, which enabled him to receive the imperial crown at the hands of a pope who owed everything to him, even to his installation in the Vatican. As for the unfortunate Romans, they were offered up as a holocaust for the greater glory of God. After enduring from Henry the severity of starvation in their loyalty to Gregory, they were exposed to the extremity of outrage—massacre, conflagration, and captivity—at the hands of Gregory's ally, Robert Guiscard. Probably to avoid dwelling amid the misery and desolation which he had caused, Gregory followed Robert to Salerno, and there in 1085 he died, refusing with the last beat of his indomitable heart to absolve Henry and Wiberto, with their followers.[3]

King Hermann, elected by the papalists as successor to Rodolph, personally gave Henry little trouble, though the long-continued and desolating war reduced the flourishing provinces of Germany almost to a desert, and retarded fearfully the pro-

[1] Concil. Roman. V. ann. 1080 (Harduin. T. VI. P. I. p. 1587).

[2] Goldast. Const. Imp. I. 236.

[3] Paul. Bernried. Vit. Greg. VII. cap. XII. No. 102.

gress of civilization. After an inglorious reign of six years, disgusted with the selfish disloyalty of his nominal supporters, Hermann in 1088 laid down his shadowy crown. Anarchy had progressed so far that his abdication made little practical difference, and Henry with varying success continued his struggle with the disaffected princes and bishops. His gradually increasing strength, however, is shown by the fact that in 1089 but four of the German bishops remained in communion with the legitimate pope, Urban II.; and the Catholic chronicler plaintively remarks that it was almost impossible for the faithful to preserve themselves from the contamination of associating with excommunicates. Urban had lost no time in renewing the censures of the church on all imperialists, and, in fact, the anathematized were gradually becoming the majority; convinced of which fact, the Catholic leaders offered to return to their allegiance if Henry would abandon his antipope, Clement III. (Wiberto of Ravenna), and receive absolution from Urban; but Henry declined, apparently not caring to replace upon his neck the yoke which he had at last succeeded in shaking off.[1]

The increasing preponderance of the imperial cause received a serious check when, in 1093, Henry's eldest son, Conrad, King of the Romans, was seduced or terrified into a rebellion against his father—seduced by the promises of the kingdom of Italy, or terrified by the prospects of eternal perdition if he persisted in adhering to one under ecclesiastical condemnation. The phantom crown bestowed upon him, however, proved illusory: after he had been employed to work, as far as in him lay, his father's ruin, he was contemptuously cast aside, and he died in 1101, in Florence, of a broken heart. Meanwhile Henry, recovering from the shock which had nearly prostrated even his well-tried firmness, returned to Germany in 1097, where with skill and moderation he allayed the weakening passions of revolt. One after another his old enemies died or submitted to him, and at length, for the first time since his majority was proclaimed, he could truly call himself emperor of all Germany.

[1] Bernold. Constant. Chron. ann. 1089.

The reckless abuse of the power of excommunication seemed at last to have produced its natural result of destroying the respect and fear entertained for the censures of the church—at least among the Germans. Elsewhere, indeed, its prestige had been successfully maintained. When, for instance, in 1095, the crusade was resolved upon in a whirlwind of enthusiasm at the council of Clermont, the powerful Hugh, Count of Gapençais, was so ill-advised as to hold aloof. Urban II. consequently excommunicated him, laid his territories under interdict, and released his subjects from their allegiance; whereupon the Counts of Forcalquier attacked him, and succeeded in annexing the Gapençais to their possessions, for so holy a cause could not fail to be successful.[1] The miserable Philip I. of France had likewise no cause to plume himself on the result of his resistance to the church. In 1091 he repudiated his wife Bertha, under pretext of affinity, imprisoning her in the castle of Montreuil-sur-Mer, and replacing her with Bertrade, wife of Foulques-Rechin, Count of Anjou. The church, the only guardian of morality and protector of the weak, could not long pass unnoticed this double adultery, and, finding its monitions vain, Hugh of Lyons, the papal legate, excommunicated him at the synod of Autun, in 1094. The next year Philip humbly sent envoys to the council of Piacenza, to excuse his non-attendance and to beg time for repentance, shortly after which Urban II., at the council of Clermont, repeated the excommunication, though Bertha by this time was dead. In 1096 Philip yielded, and separated himself from Bertrade; but his passion was unconquerable, and the next year saw them again together, and Philip affected to despise the anathema which he had incurred. Wherever the guilty pair resided, all the churches were instantly closed and divine service ceased, to be resumed only on their departure; and it is related that when they were leaving a town, and the church-bells announced the resumption of religious rites by a joyous peal, Philip would laugh, and say

[1] Gautier, Hist. de la Ville de Gap, p. 19.

to his paramour—"Sweet one, do you hear how they are ringing us out?" He was not abandoned to his iniquity, however, and in 1100 the council of Poitiers again placed him under the ban, for which the venerable fathers were cruelly persecuted by William of Aquitaine. At length Philip succumbed, and at the council of Baugency, in 1104, he appeared with his guilty partner before the papal legate, Richard of Albano, and they both swore on the Evangels to hold no further intercourse with each other; yet even this did not suffice to remove the suspicions of the church, and they were not absolved until the next year, at the council of Paris, by the direct command of Paschal II. Two years later, when his wretched life drew to its end, Philip showed how hollow had been his former bravado, for he assumed on his death-bed the garments of a monk, in expiation of his sins; while Bertrade, still in the full flush of her beauty, hid her remorse in the rigid convent of Fontevraud, where the unaccustomed austerities soon destroyed her.[1] Resistance might be prolonged, but the church eventually triumphed over the souls as well as the bodies of its enemies.

Meanwhile the increasing indifference manifested in Germany to the fearful sentence of exclusion from salvation began to excite the liveliest apprehension. The violence of Gregory and Urban met by the tireless energy of Henry, had resulted practically in a schism. Urban died in 1099, and was succeeded by Paschal II. His rival, the antipope Clement III., followed him in 1100, and was succeeded by Albert, and then by Theodoric. Germany was independent of Rome, and when Paschal II., in 1102, assembled an imposing council in the Lateran, renewed the imprecations against Henry, and caused

[1] Urbani PP. II. Epist. 68, 173, 187, 285.—Ivon. Carnotens. Epist. 13, 14, 19, 20, 21, 23, 144, 173.—Grandes Chroniques, T. III. pp. 168, 204, 206.—Concil. Æduens. (Harduin. T. VI. P. II. p. 1711).—Synod. Placentin. (Harduin. ibid.).—Gaufr. Grossi Vit. Bernard. Tiron. cap. VI. § 48.—Hugon. Floriac. Lib. II. ann. 1100.—Concil. Parisiens ann. 1105 (Harduin. T. VI. P. II. p. 1875).—Pascal. PP. II. Epist. 116.—Willelm. Malmesb. Gest. Reg. Angl. Lib. V. § 404.—D'Achery Spicileg. III. 439.

all the attending bishops to subscribe a declaration anathematizing the new heresy of disregarding the papal excommunication, he merely proclaimed to the world his own weakness, without producing a ripple on the surface of events.[1]

Yet the apparent acquiescence of the Germans in this unprecedented state of affairs was perhaps less the result of conviction than of the apathy and exhaustion consequent on the terrible war which for thirty years had wrought desolation in every corner of the land. Germany was not as yet prepared for permanent isolation from the rest of Christendom, and as the ravages of war became gradually effaced in the years of comparative tranquillity which followed the recognition of Henry's supremacy, there arose a yearning for reunion. It would be curious to speculate as to the result on the progress of civilization had the schism been perpetuated. On the one hand, Germany would have become a consolidated hereditary empire, and the energies of the people, no longer distracted by the ceaseless commotions incident to the clumsy federation of independent princes, constantly at war among themselves or with their nominal sovereign, would have doubtless achieved triumphs in the arts of peace and war which might have changed the aspect of Europe. On the other hand, the destruction of the unity of the church would have destroyed the only power able to neutralize the inherent barbaric violence of feudalism, and humanity would have been deprived of the countless benefits which the church, despite her faults and ambition, alone could bestow. In Germany, especially, the ecclesiastical body must shortly have become entirely secularized, for already her prelates were rather warlike barons than shepherds of men, and, released from the only spiritual power which could control them, religion itself, confided to such hands, might speedily have become discredited among a population sedulously imbruted.

The indisposition to remain disunited from the rest of the

[1] Concil. Lateran. ann. 1102 (Harduin. T. VI. P. II. pp. 1861-2).

church, however, renders all such speculations futile, for it speedily became intensified to the point of action. Reconciliation between the emperor and the pope was impossible, for the one could not forgive or forget the countless ills inflicted on him in the name of Roman supremacy, and the other was pledged, by tradition and by conviction, to the principle that blind obedience was due to the imprescriptible rights of the Apostolic See, and that while the church might pardon her rebellious children, it was only on condition of unconditional submission. No middle term was possible. Reunion could be purchased only by subjugation, and this was a truth patent to the eyes of all.

To this increasing uneasiness was added a more energetic source of disturbance in the growing dissatisfaction of the nobles. The canker of a long peace was beginning to grow insupportable to men whose ambition could be gratified only by war; and the emperor's policy, which looked to the elevation and protection of the burghers and serfs—of the people, in fact—was peculiarly distasteful to the feudal tyrants whose very existence was based on the maintenance of class-privileges. There can be no doubt that the existence of this spreading dissatisfaction was known to Paschal II., and that he spared no labor to foster a sentiment which promised advantages so incalculable to Rome; nor was it difficult to find an instrument by which these pious intrigues could be developed into action with the most effective result. There are some crimes over which, for the sake of humanity, it would be well to draw the veil of oblivion, even though they may have been perpetrated in the name of Christ, and under the direct supervision of His vicar. Of these is the rebellion of Henry V. against his father, but its results were too momentous in the development of our subject for us to pass it over in silence.

Henry V., then a youth of twenty-three years, had been crowned some time previous as King of the Romans; and his father, with that mistrust which had been eaten into his soul by his countless experiences of treachery, had exacted of him

a solemn oath never to conspire against him. The way to his succession seemed open and assured, yet he might well listen to the suggestion that, should his father die under the ban of the church, the heritage was liable to confiscation, and any able and powerful prince of the empire might prove a dangerous competitor for the throne. Bold, ambitious, and unscrupulous, he lent but too ready an ear to such promptings; nor was it difficult to find, among the turbulent nobles, chafing under the steady rule of the emperor, enough to organize a most formidable conspiracy. Towards the close of 1104, therefore, the son secretly left his father, and hastened into Bavaria, where his friends rapidly gathered around him. His first care was to dispatch envoys to Rome to demand whether, without injury to his soul, he could break the oath sworn to his father. The blessed Urban II., a few years before, had proclaimed to the world that oaths of fidelity given to an excommunicate were not to be kept,[1] so there was small scruple at Rome in sending to the young parricide all the assurances of which his tender conscience stood in need; and he was speedily comforted with the presence of papal legates, who gave to his unnatural enterprise all the sanctity requisite to shield it from popular abhorrence. From first to last the grovelling ambitions and pervading selfishness which inspired it were carefully kept in the background, and zeal for religion was ostentatiously put forward as its sole and only motive. Funds were raised by inflicting heavy fines on cathedral chapters for their intercourse with excommunicated bishops. The first care of the young king was to expel his father's bishops, and to replace them with his own creatures; he sedulously dug up the bodies of those who had died and cast them out of consecrated ground; and he lost no opportunity of proclaiming that his object was, not to dethrone his father, but to lead him to the reconciliation with the Apostolic See, necessary to his own salvation and to that of the empire. His effrontery of hypocrisy even went so

[1] Urbani PP. II. Epist. 256.

far as to repeat this to the face of his wretched parent when the latter, abandoned by his friends, was forced to surrender, and clasped the knees of his son in agonized pleadings for his life. So the assembly which was convened at Nordhausen, in June, 1105, ostensibly confined itself to regulating the religious affairs of Germany, with a view to removing all traces of the schism.[1] In the manifesto moreover, which, in reply to the complaints of his father, the son published to the world through the Archbishop of Magdeburg, the only reasons alleged for the movement were the destruction of the vineyard of the Lord, and the reduplicated crucifixion of Christ wrought by the hardened and irreligious heart of the emperor.[2]

When Henry, after a vain show of resistance, finding nothing but treachery in those whom most he trusted, gave himself up to his son, it was under a pledge that life and dignity should be guaranteed him, and the opportunity afforded of reconciling himself with the church. Yet when he was brought before the legates at Mainz, and he prostrated himself before his subjects, humbly confessing his rebellious disobedience, and only denying that he had been guilty of idolatry, he was thrown into close confinement, where, denied all the consolations of religion, and exposed to the torment of cold and hunger, he daily trembled for his life. In the most civilized parts of his dominions—in the cities, in the Rhinelands, and in Lorraine—Henry had ever been popular, and he had merited the affection of those whom he had endeavored to protect from the scourge of feudal tyranny. When, therefore, the people had recovered somewhat from the stupor caused by the sudden, audacious, and successful rebellion of the son, they rallied around the father, in whose favor all human instincts cried so loudly. Henry escaped from his imprisonment, and soon was able to make a show of strength by no means unimposing. His faithful citizens of Cologne gallantly resisted a protracted siege, which Henry V. was obliged to raise on the approach of his

[1] Goldast. Const. Imp. I. 247–8. [2] Annalista Saxo ann. 1106.

father with a heavy force. Fortune seemed to incline once more in favor of the emperor, and the son sought to open negotiations for an accommodation, when the weary monarch, after a few days' illness, suddenly died, his last act being to send the crown and imperial insignia to his ungrateful son, with the prayer that his body might be allowed sepulture at Speyer, and that those who had remained faithful to him might be pardoned.[1] For the sake of human nature we may well hesitate to credit the assertion that he was poisoned with the cognizance of his son, but it would be no slander to attribute his end to the pious zeal of some enthusiastic son of the church. Urban II. had not long before declared it to be sound doctrine that the slaying of an excommunicate, through ardor for the church, was not homicide.[2] Excommunicates had no rights which the orthodox were bound to respect, and in an age so faithless, turbulent, and ferocious, it was not easy, even were it desired, to impose limits on the devotion of those who had staked their own fortunes on the overthrow of an adversary so formidable to the custodian of the keys of heaven.

The enmity of Rome would not even allow Henry's wearied bones to rest quiet in the tomb. The faithful Liégeois had buried him honorably in the church of St. Lambert, but he had died unreconciled, and his son was warned that if he allowed the body of his excommunicated father to lie in consecrated ground, he would become his accomplice, and be liable to the same punishment. The young king was in the hands of the church; the church was unforgiving, and exacted of him the

[1] Annal. Hildesheim, ann. 1104–5; Annalista Saxo ann. 1104–6; Chron. Andrens. Monast. (D'Achery II. 792); Chron. Reg. Colon. ann. 1105–6; Narrat. Restaur. Abbat. S. Martini Tornacens. (D'Achery II. 914); Epistt. Henrici Imp. ad Hugon. Cluniacens. (D'Achery III. 441–3).—All the emperors of the House of Franconia were buried at Speyer in obedience to a decree of Conrad the Salic (Joh. de Mutterstatt. Chron. Spirens. *ap.* Senckenberg. Selecta Juris T. VI. p. 159), and it continued to be the place of imperial sepulture until the commencement of the fourteenth century—Gesta Trevirorum (Martene Ampliss. Collect. IV. 390).

[2] Urbani PP. II. Epist. 122.

final act of parricide. He had done too much to hesitate now, and unflinchingly he ordered his father's corpse to be dug up and thrust into the earth in an island of the Rhine, where no religious services were permitted, save that a wandering pilgrim from Jerusalem lingered at the spot, and chanted a psalm over the grave of the once mighty kaiser, who had dared to defy the whole power of the church, and had been broken in the hour of his triumph.[1]

The impatient and unscrupulous ambition of Henry V. had thus thrown away recklessly all the fruits of his father's thirty years of labor and anguish. Hailed for the moment as the new Maccabee, and as the deliverer of the church, he had made himself of necessity the slave of the church. It was in vain that by personal violence he extorted from his accomplice Paschal II. the abandonment of the claim to the investitures. To save himself from being declared a heretic, the wretched pope was obliged to disown his own agreement. The chronic rebellion in Germany, revived by Henry, and carefully fostered by the church, rendered his excommunication in 1115 a fatal entanglement, from which he failed to extricate himself by resorting to his father's expedient of setting up an anti-pope. His tool, the unhappy Martin Burdinus, paid the penalty of his perilous dignity; and Henry, after prolonging to the last the fruitless struggle, was finally obliged to yield in 1122. A country ruined by anarchy, and the abandonment of the investitures, were the natural results of his alliance

[1] Chron. Hildesheim. ann. 1106 (Leibnitz Script. Rer. Brunswic. I. 736). The chronicler of Speyer states that the body of the Emperor was brought to that city and lay unburied on a bier in the chapel of St. Afra for seven years. At length, in 1111, Henry V. procured the absolution of his father, and the corpse at last was buried with those of Henry III. and Conrad the Salic. Henry V. must have felt some remorse for his crime, for he released the citizens of Speyer from certain exactions on the condition that on his father's anniversary they should all assemble reverently at vigils and at mass, holding candles in their hands, and that each household should contribute a loaf of bread for the poor.—Chron. Spirens. (op. cit. pp. 169-72).

with the church—the inevitable price paid for its assistance in destroying his father.[1]

The church had thoroughly won the victory, and thenceforth its behests were to be obeyed and its ministers held sacred, for they wielded the terrible spiritual sword, always unsheathed, and always ready to cut off the contumacious from the joys of earth and the hopes of heaven. Against it vainly struggled powerful monarchs like the Hohenstauffens, Henry, and John of England, Philip Augustus, and Louis of Bavaria; and where these were obliged to yield, what chance was there for the humbler sinner? Not only did it protect the rights, dignities, privileges, and possessions of the ecclesiastic from open violence or indiscreet examination, but it enabled the church to intervene decisively in the politics of every state in Christendom, and thus to acquire the position of universal arbiter and suzerain. When John of England succumbed in the long struggle with Innocent III. and yielded up to St. Peter the suzerainty of his kingdoms, it was the interdict which vanquished him, nor did the pope consider the dominion thus acquired to be a mere honorary title. Failing in his contest with his barons, John complained to Innocent of the extortion of Magna Charta, and astutely suggested that his troubles with his rebellious subjects prevented him from fulfilling the vow which he had taken to enter upon a crusade. Innocent hastened to his relief; pronounced the charter void, forbade his performing its promises, and threatened excommunication against all who should insist upon its execution. In the same spirit he wrote to the barons reproaching them for not having referred to his tribunal their differences with their sovereign, revoking the charter, and commanding them to abandon it. His mandate being unheeded, he proceeded without delay to fulminate an excommunication against them all, denouncing

[1] Annal. Saxo ann. 1111–23. The documents may be found in Hartzheim Concil. German. T. III. pp. 258 sqq., 275 sqq.—Udalr. Babenb. Cod. Lib. II. cap. 259, 265 sqq. 295, 303.

them as worse than Saracens, and offering remission of sins to all who should attack them.[1] What would have been the result of the conflict had the resolute pope not died soon afterwards it is impossible to say; and it is not a little curious to observe that in time the very instrumentality used by Innocent to annul the transaction of Runnymede was invoked for its protection. When, in 1253, it was desired to invest the great charters of English liberty with the most solemn guarantee possible, no more efficient device could be suggested than pronouncing a formal sentence of excommunication against all who should dare to infringe them;[2] and when, in 1297, Edward I. renewed those charters in return for an octave of his subjects' substance, he intensified the security by ordering that this sentence of excommunication should be pronounced twice a year by every prelate in his dominions.[3] Subsequently this rule was extended to embrace the lower clergy, and until the year 1534 in every parish church in England the priest was required three or four times in each year to include infractions of Magna Charta and the Charta de Foresta among the sins for which he pronounced a formula of imprecation, with bell, book, and candle, as minute in details of malediction as Hervey of Rheims or Benedict VIII. could have asked for.

> "Than thou thi candell shalt cast to grounde,
> And spet therto the same stound
> And lete also the belles knylle,
> To make her hartes the mor grylle.[4]

If the church thus at one place could become the guarantor of the people's liberties, it had as much right elsewhere, and

[1] Rymer, Fœdera I. 200–208. [2] Matt. Paris, ann. 1253.

[3] Thomson's Magna Charta, London, 1829, p. 371.—Cf. Rymer, Fœdera II. 793–4.

[4] John Myrc's Instructions for Parish Priests p. 24 (Early English Text Soc.). See also, in the notes, Ibid. p. 84, an extract from the Sarum Manual of 1530. Myrc speaks of the excommunication being pronounced "twies or thries in the yere;" but in the formula given by Strype (Eccles. Memorials T. I. App. No. XLVI.) it is required once in each quarter.

as little scruple, in assisting their tyrants. When, in 1141, William II., Count of Montpellier, was driven from the city by his burghers, with the countenance of Arnaud, Archbishop of Narbonne, Innocent II. lost no time in excommunicating the consuls of Montpellier and their abettors, and laying on the city an interdict which prohibited all religious services except infant baptism and death-bed penitence. The struggle was kept up for some time, but the citizens at length were obliged to yield.[1]

So, too, when evil-disposed monarchs were bold enough to question the right of the Holy See to dispose at will of the rich prelacies within their dominions, it cost but a skin of parchment and an ounce of lead either to cut off from the church the ill-advised sovereign, or to lay whole provinces under interdict, until the faithful, tired of living in graceless deprivation of the consolations of religion, could prevail upon the stubborn ruler to give way.[2] Thus Calixtus II. treated Henry of England in 1119, in consequence of his contumacy with respect to Thurstan of York;[3] Innocent II. was equally

[1] Innocent. PP. II. Epist. 509, 518.—Hugon. Rothomag. Epist. xi.

[2] The conditions and regulations of the Interdict varied at different times and under different circumstances. As described in the council of Limoges in 1031, the rites of religion were conducted secretly, with closed doors, but the laity were admitted to the sacraments of baptism, penitence, and the viaticum. They were not allowed to marry, however, during its continuance, nor to shave or have their hair cut, and were obliged to fast as in Lent. (Concil. Lemovicens. II. Sess. II.—Harduin. T. VI. P. I. p. 885.) In the interdict inflicted on England by Innocent III. under King John, which lasted for six years, three months, and fourteen days, all the rites of religion ceased except baptism, confession, and the viaticum (Matt. Paris Hist. Maj. ann. 1208, 1214). Subsequently, however, this rigor was somewhat relaxed, and the faithful were admitted privately to the consolations of religion, though all public ceremonies were prohibited (Lib. V. Extra Tit. XXXIII. cap. 25; Tit. XXXVIII. cap. 11; Tit. XL. cap. 17—Lib. V. in Sexto Tit. XI. cap. 24). Yet considerable confusion existed in the clerical mind on the subject, and lawful concessions were frequently refused and unlawful ones granted (Concil. Bambergens. ann. 1491 Tit. LX.—Hartzheim. V. 634).

[3] Calixti PP. II. Epist. 44.

energetic with Louis le Jeune of France in 1141, with regard to the Archbishop of Bourges;[1] and Clement III., in 1188, was as peremptory with William of Scotland in the case of John, Bishop of St. Andrews.[2] If the commands of the Vicegerent of God were not promptly obeyed, Heaven did not fail to come to the rescue. Thus Henry was punished for his obstinacy with respect to Thurstan by the loss of his son William, who was drowned at sea during the next year; and when Urraca of Castile married Alphonso of Arragon within the prohibited degrees, and not only refused to separate from him, but disregarded the consequent excommunication, her sudden death, and the fall of Alphonso in battle with the Moors, showed how dangerous it was to trifle with penalties so awful.[3] So when, in 1197, Rhys, King of South Wales, ill-treated Peter de Leia, Bishop of St. Davids, the latter promptly excommunicated him and his sons, and laid his territories under interdict. In a few days Heaven vindicated its servant in the death of King Rhys, when Gryffyth, his son, promptly made submission, and Bishop Peter enjoyed the noble revenge of scourging the dead king's decaying remains before he would allow them to be consigned to Christian sepulture.[4]

It requires no effort of the imagination to conceive the almost illimitable power conferred upon those who thus could at any moment strike down their enemies, public or private, with a weapon so irresistible; and it was only a logical conclusion from such premises when Thomas à Becket exclaimed, "Who doubts that the ministers of Christ are the fathers and masters of kings, and princes, and all the faithful? Is it not recognized as miserable madness when the child endeavors to subdue the father, or the disciple his master, and to impose unjust condi-

[1] Robert. de Monte. ann. 1141.

[2] Roger. Hoved. ann. 1188. Cf. Gesta Henrici II. pp. 263, 265, 276-7 (M. R. Series).

[3] Pascal PP. II. Epist. 307, 349.

[4] Haddan and Stubbs's Councils of Gr. Brit. I. 393.

tions on him who is known to have the power of binding and loosing him not only on earth, but in heaven?"[1] So absolute was this domination, that in 1497 we see the Abbot of Weissenberg excommunicating the Elector Philip, Palatine of the Rhine and Duke of Bavaria, not only without trial, but without notice, summons, or complaint, and, notwithstanding the irregularity of this proceeding, all that the powerful prince could do was to apply to Maximilian I. to intercede for him with the pope to have the curse removed.[2]

The power thus inherent in the humblest member of the hierarchy was concentrated in the person of the pope, whose sentence was without appeal, while he could revoke the imprecations of his subordinates; for though the rule that the ban must be removed by him who had imposed it still held good—

> Gif thou a mon a-corset has,
> He mote nede be soyled of the,
> Whoso pareschen euer he be[3]—

still it referred of course only to action among equals, and the punishment could be set aside on appeal to a superior.

The papal prerogative therefore became limited in principle only by the discretion or ability of the wearer of the tiara; though in practice, of course, there were extremes beyond which it was not safe to exercise the rights claimed as imprescriptible and indefeasible. How far the mediæval casuists were disposed to push their definitions of papal omnipotence and irresponsibility is shown in a declaration of the canon law that if a pope was so lost to the duties of his high station that through negligence he drew innumerable multitudes of the faithful with him to hell, yet was he not to be reproved by any man, for he was to judge mankind, and not to be judged

[1] S. Thomæ Cantuar. Epist. 73 (Ed. Giles).

[2] Epist. Maximil. I. ad Pontif. (Ludewig Reliq. Mssctor. T. VI. p. 103).

[3] Myrc's Instructions to Parish Priests, p. 26.

by man; therefore the nations were to pray for him, for on him their salvation depended, next to God.[1] When such were the teachings of the church, Matthew of Vendome could well exclaim—

> Papa regit reges, dominos dominatur, acerbis
> Principibus stabili jure jubere jubet.[2]

And in this he only paraphrased the declaration of Innocent III., who asserted that Christ had subjected to the rule of the popes not only the whole church but the whole world;[3] while Clement IV., in 1254, claimed that the Roman church, as the mother and mistress of all, possessed supreme sovereignty over kings and kingdoms, and that through it the whole Catholic world was governed.[4] These doctrines were fully accepted by the canonists; and a writer, who passes under the name of Thomas Aquinas, only expressed the accepted belief when he argued that the temporal jurisdiction of kings and potentates was simply derivative from the power entrusted by Christ to Peter and his successors, though he admitted that in some respects the functions of the popes were not equal to those of Christ.[5] Even after the Reformation, Simancas, Bishop of Badajoz, declared that the popes have power to dethrone kings who are useless to their subjects and who adopt laws adverse to the interests of religion;[6] and the casuists decided that the pope could compel a king to marry any individual woman, if

[1] Gratian. Decret. P. I. Dist. 40 can. 6.—This was one of the canons alleged by Luther in justification of his publicly burning the canon law at Wittemberg in 1520 (Lutheri Opp. Jenæ, 1581, T. II. fol. 317*b*).

[2] Matt. Vindocinens. Commendat. Papæ (Migne's Patrol. T. 205, p. 980).

[3] Innocent. PP. III. Lib. II. Epist. 209.

[4] Cod. Epist. Rudolphi I. p. 305 (Lipsiæ, 1806).

[5] S. Th. Aquinat. de Principum Regimine Lib. III. cap. 10. The authenticity of this work is more than doubtful, but as it was universally attributed to Aquinas it contained nothing to shock the opinions of the orthodox.

[6] Jacob. Simancæ de Cathol. Instit. Tit. XLV. No. 25 (Romæ, 1575).

it were for the benefit of the church.[1] While thus there was no question so great as to be beyond the limit of papal jurisdiction, there was none so small but what it could be carried by appeal to Rome. Alexander III. was obliged to inform a bishop of Exeter that if children in an ecclesiastical school quarrelled and angrily pummelled each other, they were to be sent to Rome for punishment, but that if it occurred in play the matter ought to be settled at home and not to be sent to him for adjudication.[2] Thus, from the highest to the lowest, every man in Christendom might at any moment find himself at the mercy of the Supreme Pontiff, whose decrees were final and irreversible. The pope was not only, indeed, the ruler of kings and the sovereign of monarchs, but he was more than man and little less than God. As Geoffrey Vinsauf declares, addressing Innocent III.—

> Non Deus es, nec homo; sed neuter et inter utrumque,
> Quem Deus elegit socium: socialiter egit
> Tecum partitus mundum, sibi noluit unus
> Omnia, sed, voluit tibi terras et sibi cœlum.[3]

This is not to be considered as the delirium of blasphemous flattery. Already in the ninth century Nicholas I. had seriously argued that the pope could not be bound or loosed by the secular powers, because Constantine had called him God, and it was manifest that God was not to be judged by man.[4] Indeed, if, as it was in good faith alleged, the simple priest was superior to the angels, because he could in the Eucharist bring the true body of Christ to earth from heaven in an instant,[5]

[1] Rodriguez, Nuova Somma de' Casi di Coscienza P. I. c. 230 No. 7.

[2] Lib. v. Extra Tit. xxxix. c. 1.

[3] Hurter, Hist. du Pape Innocent III., Paris, 1840, T. I. p. 68. Vinsauf failed in receiving the reward of his adulation, whereupon his facile pen found no difficulty in decrying the pope as energetically as it had flattered him.

[4] Gratian. Decret. I. Dist. XCVI. c. vii.

[5] Marquardi de Susanis Tract. de Cœlibatu Sacerdotum, Venetiis, 1565—a work dedicated to Pius IV.

there was small hesitation in thus extolling the faculties of the visible head of the church. Such in fact was the conviction of the church, and Innocent III. himself, in his sermon delivered on his consecration, had no hesitation in asserting the same of himself—"Now you may see who is the servant who is placed over the family of the Lord; truly is he the vicar of Jesus Christ, the successor of Peter, the Christ of the Lord, the God of Pharaoh; placed in the middle between God and man, on this side of God, but beyond man; less than God, but greater than man; who judges all, but is judged of none."[1] The character of Innocent forbids us to suppose that he magnified his office beyond his own honest conviction of the position assigned to it by God, and his conviction was that of all faithful Christians. He was no charlatan, and when on the same occasion he expressed his anxiety lest he should kill the souls that ought to enjoy eternal life, or give life to those which ought to die, we can measure the extent to which it was conceded that God had abnegated His power and had intrusted it to a mortal.[2]

[1] "Vicarius Jesu Christi, Christus Domini, Deus Pharaonis; inter Deum et hominem medius constitutus, citra Deum sed ultra hominem; minor Deo sed major homine; qui de omnibus judicat, et a nemine judicatur."—Innocent. PP. III. Serm. iii. in Consecrat. (Migne's Patrol. T. 217, p. 659).

[2] Ibid. p. 658.—Experience of his own fallibility seems in time to have sobered Innocent somewhat, and towards the close of his pontificate he was by no means so assured of his omnipotence. In 1212 he admits that the church may err, and that its judgment may be very different from that of God—"Judicium Dei veritati quæ non fallit nec fallitur semper inuititur; judicium autem ecclesiæ nonnunquam opinionem sequitur, quam et fallere sæpe contingit, et falli; propter quod contingit interdum ut qui ligatus est apud Deum, apud ecclesiam sit solutus: et qui liber est apud Deum, ecclesiastica sit sententia innodatus." (Cap. 28 Extra v. xxxix.)

The admission of this into the decretals of Gregory IX. shows that the fallibility of the church in the distribution of its censures was acknowledged, yet to examine the doctrines of the casuists as to the sentences which were irrefragable and those which could be set aside by the mercy of God would occupy too much space. Theoretically it was admitted

These assumptions, as I have said, were accepted by the church. In 1335 Bishop Alvarez Pelayo lays down the doctrine that as Christ partook of the nature of God and man, so the pope, as His vicar, participates with Him in the divine nature as to spiritual things and in the nature of man as to temporals,[1] so that he is not simply a man but rather a God on earth.[2] These extravagances are perpetuated to modern times. During the sessions of the Vatican Council, on Jan. 9, 1870, Mermeillod, Bishop of Hebron and Coadjutor of Geneva, in a sermon preached in the church of San Andrea delle Valle, described three incarnations of Christ—the first in Judea for the Atonement, the next in the sacrifice of the Eucharist, and now "the Saviour is once more on earth—He is in the Vatican in the person of an aged man"—and the promotion with which the preacher was rewarded showed that such adulation was duly appreciated. Scarcely less blasphemous were the expressions used by the Irish church at the *Triduum*, or celebration of papal infallibility in Dublin, in September, 1870—"The pope is Christ in office, Christ in jurisdiction and power . . . we bow down before thy voice, O Pius, as before the voice of Christ, the God of Truth . . . in clinging to thee, we cling to Christ."

The mediæval doctors, indeed, could hardly find words strong enough to express their sense of the irresponsible omnipotence of the pope. In the twelfth century Peter Cantor complains that the canons existed solely at the pleasure of the

that the decree of excommunication did not irreversibly consign its subject to perdition, but practically the power of the church to regulate at will the future destiny of the faithful was assumed and acted on.

[1] Quia sicut Christus est deus et homo . . . sic ejus vicarius generalis et singularis papa participat cum Christo quodammodo naturæ divinitatis quoad spiritualia, et humanitatis quoad temporalia.—Alvari Pelagii de Planctu Ecclesiæ Lib. I. Art. 37 Rat. 2 (Lugduu. 1517, fol. viii.).

[2] Ejusd. Lib. I. Art. 68 No. J. (fol. lxix.)—"Papa non homo simpliciter sed quasi deus in terris est." Yet Pelayo was by no means blind to the crimes of the popes, and catalogues them with a fulness that no orthodox writer since the Reformation would venture to do—Ibid. Lib. II. Art. 15.

pope,[1] which shows that Gratian's assertion to that effect had become practically recognized.[2] When such opinions were current, it need not surprise us that not long after this period the legal author of the Richstich Landrecht, while defining with jealous care the boundary between papal and secular legislation, adds that the clergy claim for the pope the right to alter the doctrines of the Apostles;[3] and that good ecclesiastical authority asserted that "The pope is bound by no forms of law; his pleasure is law"—"The pope makes right of that which is wrong, and can change the nature of things"—"The pope is all and over all; he can change square things into round, make black white, and white black"[4]—"The pope can destroy the whole of the canon law and enact a new one."[5] All of which is scarcely more extravagant than the power which Eugenius IV., in 1439, declared to be inherent in the papacy.[6] Adrian VI. was fully of this persuasion when in 1523 he sought to withdraw the Elector Frederick of Saxony from the support of Luther; and, to prove that the ecclesiastical body could not through corruption forfeit its right to the obedience of the laity, he argued thus—"Thou art a sheep; presume not to impugn thy shepherd, nor to judge thy God and Christ."[7] An organization which thus conferred superhuman prerogatives on human frailty invited corruption; and that it should succumb to the evil influences thus fostered can surely not be a matter for surprise. As the cardinals com-

[1] In ejus enim potestate est condendi, interpretandi et abrogandi canones.—Pet. Cantor. Verb. Abbrev. cap. LIII.

[2] Gratian. P. II. caus. XXV. quest. 2 ad calcem.

[3] Richstich Landrecht, Lib. II. cap. 24.

[4] Prosper Fagnani, Commentt. in Libb. Decretalium, Vesuntione, 1740, pp. 153, 297, 592 (Ap. Chavard. Le Célibat des Prêtres, Paris, 1874, p. 346).

[5] See the propositions of John Angelus, condemned by the University of Paris in 1482 (Geddes' Modest Apology for the Catholics of Great Britain, p. 97).

[6] Raynald. Annal. ann. 1439 No. 37.

[7] Adriani PP. VI. Breve ad Frid. Saxon. (Lutheri Opp. Jenæ, 1581, T. I. fol. 543*b*.)

missioned in 1538 by Paul III. to frame a project of reformation for the church, expressed it in their report to him—"The predecessors of your Holiness surrounded themselves with advisers selected with the object not of learning what they ought to do but of cunningly finding excuses for doing as they pleased. Thence it has followed that the wishes of the popes have been the sole rule of their actions, and they have grown to believe that whatever they desired was lawful to them. From this source, holy father, as from the Trojan horse, it is that the church of God is overwhelmed with so many abuses and diseases so grave as those by which we see her now reduced to a condition almost hopeless; and the knowledge of these things has reached even to the Infidel (if your Holiness will believe those who know) who principally on this account ridicule the Christian religion, so that through us, through us we say, the name of Christ is blasphemed throughout the world."[1]

It may be uncharitable to assume that it is only the unbelief of godless generations that restrains the church from similar degeneracy at the present day, for, as we have seen, it has abated no jot of its pretensions to the illimitable supremacy of its chief. The logical deduction from such principles is to be found in the assertion by a leading organ of the church in America—"The finger of the pope, like the needle in the compass, invariably points to the pole of eternal truth, and the mind of the sovereign pontiff is as certain to reflect the mind and will of God, as the mirror at one end of a submarine cable to indicate the electric signal made at the other."[2] Men who can promulgate doctrines such as these are quite prepared to take advantage of all the possible consequences of Infallibility.

[1] Le Plat, Mounment. Concil. Trident. II. 596. The commission which drew up this report was composed of the best men of the Roman court. Caraffa, afterwards Paul IV., was its head, assisted by Cardinals Contarini, Sadoleti, Reginald Pole and others. In its outspoken frankness it gives a picture of the corruptions of the church as damaging as anything the Reformers dared to allege.

[2] Catholic World, New York, July, 1870.

TEMPORAL PENALTIES.

This marvellous structure of theocratic autocracy was not erected solely on the spiritual powers claimed by the church. Indeed, had excommunication entailed only the remote consequence of perdition, it would have been comparatively inert in its effects on the violence of the turbulent races of Europe. Its full significance, however, was insured by its carrying with it a constantly increasing list of temporal disabilities and penalties. We have seen how Charlemagne lent the power of the state to the church which he used as an instrument in constructing his evanescent civilization, and how his impotent successors vainly sought to strengthen themselves by fusing the temporal and spiritual punishments. The power of calling upon the state then granted to the church was improved by the forgery of the Capitulary of Louis le Débonnaire, prescribing a year and a day as the limit beyond which the disregard of excommunication entailed the severest temporal inflictions, and these rights became the most effective means of subduing the state, as Henry IV. found by the bitterest experience. It was gradually recognized in the jurisprudence of all Europe that the civil power was bound to aid in the enforcement of ecclesiastical censures; and thus the jurisdiction of the church became a net, strong enough to hold the most powerful, yet with meshes so fine that the smallest and humblest could not escape. It was bound by no statute of limitations, nor confined by any territorial circumscription; the sentence pronounced in Lisbon was equally valid in Copenhagen; to escape it the criminal must take refuge with the schismatic Greek or the infidel Moslem; and if he evaded it by opportunely dying his bones could be cast forth from their resting-place, and his posterity could be visited with the reversion of the civil penalties.

The segregation which we have seen practised in the earlier ages of the church had by this time become a portion of the penalty of excommunication far more serious to wordly minds than the remote spiritual consequences which death-bed penitence might haply remove. The liability to share the punishment of an excommunicate for the simplest offices or greeting tendered to him was universally admitted.[1] No one was even to salute him, and the confessor was instructed, among the regular questions addressed to his penitents, to inquire whether they had exchanged a word or a greeting with any one under the ban of the church.[2] Worse than a leper, he was to die like a dog, and all the promptings of humanity in his behalf were to be sternly repressed. About 1120 a monk of Flay abandoning his monastery gave as a reason that he was a physician, and that his abbot had forced him to exercise his art on excommunicates, for the benefit of the abbey, to the manifest peril of his soul,— and St. Bernard esteemed the reason a valid one.[3] Of course, to supply the anathematized with the necessaries of life was a heinous offence, and in the bull published about the year 1420, by Martin V. against his rival Peter de Luna and his cardinals, the pope declares that if any one shall give or sell them bread or water, or other assistance, he shall *ipso facto* be excommunicate until death, and his descendants, male and female, to the second generation, shall be subject to the civil disabilities consequent upon excision from the church.[4]

The excommunicate thus shed around him a contagion which cut him off from all human society and left him to perish in misery and starvation. This was no mere theoretical infliction, but a law enforced with all the power of the church and applied so liberally that it became almost impossible for

[1] Ordo Excom. Sæc. x. (Migne's Patrol. T. 138 p. 1125).
[2] Burchard. Decret. Lib. XIX. cap. 5 § de excommunicat.
[3] S. Bernardi Epist. 67.
[4] Ludewig. Reliq. Mssctor. T. V. pp. 424–5.

the innocent to escape its effects. In the early part of the fifteenth century, Chancellor Gerson complains of this as an intolerable abuse, and suggests as the only mode of preserving the conscientious Christian from ceaseless peril, that accountability should only attach to associating with those whose excommunication had been formally pronounced by a regular sentence, and not when it had merely been incurred by infringing some rule for which an *ipso facto* anathema was the penalty[1]—as in the former case there was some chance that the condition of the criminal might be known, while in the latter it was almost impossible that those who met him could be aware of his guilt and its consequences. Flagrantly unjust as was the refusal of this slender concession, yet the ecclesiastical authorities were unwilling to grant it. It was one of the reforms expected of the council of Constance, but that body separated without accomplishing any of the measures for which it had been assembled, except the condemnation of the Hussites and the extinguishment of the Great Schism; and the only effort made in this direction was a clause in the concordat between Martin V. and the Germans, under the auspices of the council, by which the very moderate concession suggested by Gerson was provided as a special and merciful grace to the subjects of the empire, no such clause being inserted in the concordats proposed with France and England.[2] The council of Bâle assembled with a more resolute determination to uproot the abuses which were destroying the church, and it adopted this provision of the German Concordat as a general rule.[3] The well-meant efforts of the council, however, were baffled by the invincible repugnance to reform manifested by the papacy, and so little was this decree respected that we find the limitation which it thus established as a universal law of the church

[1] Joann. Gerson. de Vit. Spirit. Animæ Lect. iv. Coroll. xiv. Prop. 1.

[2] Concil. Constant. Sess. xliii. (Harduin VIII. 892). Violence offered to ecclesiastics, however, was excepted from the benefits of the limitation.

[3] Concil. Basiliens. Sess. xx. cap. 2 (Harduin. VIII. 1194).

granted once more as a special favor to the French, in 1516, by Leo X. in his concordat with Francis I.[1]

All this is very suggestive of the dangers perpetually surrounding those who had the misfortune to reside where no such privileges had been graciously accorded, and even this modified restriction by no means afforded immunity from the consequences of ignorance. How easily the most conscientious and obedient sons of the church might incur the heaviest of ecclesiastical censures is manifested in 1297 by a complaint from the citizens of Berlin to Boniface VIII., that their town was frequently subjected to interdict in consequence of ignorantly furnishing food and shelter to wayfarers who subsequently were found to be excommunicates; and Boniface graciously granted to them as a special privilege, that the rule should not be enforced if the outcasts left the town promptly or were forthwith turned out by their citizens on their guilt becoming known.[2]

The whole theory of the consequences of excommunication is well developed in the charter of foundation granted to the church of St. Mary Magdalen, in 1520, by Jerome, Bishop of Brandenburg. All who dare to infringe its provisions are declared excommunicate, *nunc pro tunc* and *tunc pro nunc*. For ten days the anathema is to be pronounced in the church, against the offender, with bell, book, and candle, when, if he remains obdurate, the priest at the head of the citizens is to proceed to his house and to cast at it three stones in token of eternal damnation. If for another ten days he continues contumacious, then his friends and relations and servants are to be warned not to minister to him salt, or food, or drink, or water, or fire, or to perform any other office of humanity under pain of sharing his punishment. If this is insufficient for another ten days, then any place, or town, or church, or monastery where he may take refuge is laid under an interdict, lasting until three days after his departure. If the hardened

[1] Concordat. Leon. X. Rubr. 9 (Isambert, Anc. Lois Franç. T. XII. pp. 92-3).

[2] Ludewig. Reliq. Mssctor. T. XI. p. 613.

sinner persists in his impenitence for ten days more, then all secular authorities, judges, nobles, and others having jurisdiction are ordered, under pain of excommunication, to seize his person and property, goods, lands, and chattels, for imprisonment and confiscation.[1]

It was only by means of the secular power that these consequences of excommunication could be enforced; and the secular power, as a rule, was prompt in lending its aid. Almost every code in Europe pledged its assistance to vindicate the authority of the church, and this was generally done by depriving the excommunicate of his privileges as a citizen, or by withdrawing from him all legal protection and rendering him an outlaw—that is a wild beast, bearing a *caput lupinum*—to be tracked and slain by any one.

Notwithstanding the failure of Henry II. in the constitutions of Clarendon, the English law, after the bitter experience of ecclesiastical tenderness under King John, was peculiarly jealous of all ecclesiastical interference. Yet the excommunicate could enter into no legal contracts; he had no standing in court, either as plaintiff or advocate; he was denied the wager of battle, and no one could eat, or drink, or speak, or live with him, either publicly or in private; he was held to be a leper and worse than a leper, for he could execute no legal act.[2] Indeed, from the time of the Saxons, harboring an excommunicate was an offence against the crown which placed the offender at the king's mercy, both as to person and property;[3]

[1] Fundationis Eccles. M. Magdal. §§ 14–22 (Ludewig. T. XI. pp. 457–69). See also the excommunication of Rano von Kannenstein, in 1467, by the Abbot of Pegau (Ejusd. T. XII. p. 276). The ceremony of stoning the house of an excommunicate was one of wide extent. It was forbidden in 1337 by the council of Avignon (Concil. Avenion. ann 1337 can. 8.—Harduin. VII. 1624–5).

[2] Horne, Myrror of Justice, cap. ii. §§ 3, 5, 27; cap. iii. § 23.—Bracton, Lib. v. Tract. v. cap. 18 § 1; cap. 23 § 1.—Fleta. Lib. vi. cap. xv. § 2.

[3] Cnuti. Ll. Secul. Tit. lxvii.—Ll. Henrici I. Tit. x. § 1; Tit. xi. § 14; Tit. xiii. § 10.

and, in the quarterly curse read in every parish church in England four times a year until 1534, the major excommunication was denounced against all who should receive "a cursed man from the tyme that he hath layen in cursyng xl dayes & wil seke for no remedy."[1] If any one thus remained under excommunication for forty days, the bishop could apply to the king's court, whence immediately a writ was issued to the sheriff commanding him to seize the offender and to imprison him or hold him in sufficient bail until he gave full satisfaction to the church, and he could be released only in virtue of an episcopal declaration of his reconciliation, unless, indeed, he could prove that the ecclesiastical proceedings against him had been unlawful.[2] Disobedience to the king's writ entailed outlawry, with all its tremendous consequences, and this was the result of persistent contumacy.[3] The church struggled hard to maintain these privileges, which were not unfrequently disregarded. In 1261, the council of Lambeth complained that sometimes the writ *de excommunicato capiendo* was refused, in which case it orders the bishop whose application was disregarded to place under interdict all the royal possessions in his diocese. Sometimes, also, the sheriffs and bailiffs allowed the bishop's prisoners to be discharged, for which those officials are ordered to be duly excommunicated.[4] A century later the church advanced in its pretensions, for the council of London in 1342 complains bitterly of imprisoned excommunicates being liberated on bail to answer before the ecclesiastical courts. It denounces this as an interference with the jurisdiction of the church, but has no remedy to suggest except further excommunications.[5]

Yet with all this the independent insular spirit is shown in

[1] Strype's Eccles. Memorials I. Append. No. XLVI.

[2] Bracton, Lib. v. Tract. v. cap. ii. §§ 2, 4; cap. xxiii. § 4.

[3] Bracton, Lib. III. Tract. ii. cap. xii. § 8.

[4] Concil. Lambeth. ann. 1261 can. de Excom. capiend. (Harduin. VII. 539).

[5] Concil. London. ann. 1342 can. xiii. (Harduin. VII. 1666).

the power assumed by the king of commanding the ordinaries, or episcopal officials, to remove excommunication within a stated time, and in 1315 Edward II. promised that he would issue no more letters to that effect, except in cases where the ecclesiastical sentence appeared to infringe upon the royal prerogative.[1] It was ominous of the future, moreover, that when in 1389 the Statute of Provisors, which deprived the papal court of patronage in the English church, was revived, it was re-enforced by a provision that any one bringing into the kingdom any excommunication for actions arising under the statute should be imprisoned with liability of life and limb, and all his lands and goods be forfeited to the king; while any one pretending to execute such an excommunication, should, if a prelate, be deprived of his temporalities during the king's pleasure, and, if of lower degree, be thrown into prison and subjected to a discretionary fine.[2]

Wales was even more prompt in enforcing the sentences of the ecclesiastical courts, and the law was obliged to interfere rather for the protection of the excommunicate under the fearful disadvantages of his outlawed condition. "If a person be excommunicated, whatever the cause for which he may be excommunicated, and the lord willeth his spoil on the spot, the law says that he is not to suffer spoliation until he shall have been excommunicated a month and a day."[3] That he should be exposed to the ordinary disabilities of the outlaw is, therefore, a matter of course.[4] During the period which preceded the final absorption of Wales, however, the Normanizing influence of the prelates led to long and intricate quarrels between them and the native princes, in which the secular power frequently declined to support the censures of the church. Thus

[1] IX. Edw. II. cap. 7 (Statutes at Large, I. 168, Ed. 1769).

[2] XIII. Ric. II. cap. 3 (Ibid. p. 395).

[3] Anomalous Laws, Bk. v. chap. ii. § 91; Bk. xi. ch. iii. § 23. (Aneurin Owen's Ancient Laws, etc., of Wales, Vol. II. pp. 75, 411.)

[4] Dimetian Code, Bk. iii. ch. i. § 10.—Anomalous Laws, Bk. viii. ch. xi. § 19. (Ibid. I. 591; II. 205.)

in a settlement of disputed questions made in 1261 between Llywelyn, Prince of Wales, and Richard, Bishop of Bangor, there is a clause providing that the former, when duly called upon, shall arrest excommunicates, which apparently he had previously refused to do.[1]

In France the church at first seems to have endeavored to take the matter into its own hands, by applying both spiritual and temporal penalties. The eulogist of Geoffrey of Muret, who was Abbot of Castres in 1110, describes how in his holy zeal he threw into his dungeons those whom he had delivered over to Satan, if they remained impenitent for a year, and how his victims, recalcitrating against this double punishment, appealed to the secular tribunals, giving rise to a lively quarrel between the two jurisdictions.[2] In time, however, the state came to the aid of the church, and supported its anathema with civil inflictions, though when this became a matter of course, I cannot affirm with certainty. In 1216 we find the council of Melun resolving that the secular power should be compelled to seize the persons and properties of all who remained under the ban of the church for a year and a day.[3] The first formal acceptance of this doctrine by the state, however, appears to have arisen from the efforts to quench the Albigensian heresy, when the Regent Blanche of Castile, in 1228, in an edict addressed to the authorities of Nismes and Narbonne, deplores the contempt generally felt in those districts for the sentence of excommunication, and directs that avoidance of intercourse with excommunicates shall be strictly observed, while any one remaining unreconciled for a year shall be compelled to seek absolution by the seizure of all his property, real and personal, which shall not be returned until he shall be readmitted to communion, and not even then

[1] Haddan and Stubbs's Councils of Gr. Brit. I. 490.

[2] Du Cange, Observations sur les Mémoires de Joinville, P. I. No. 27.

[3] Concil. Melodun. ann. 1216 can. 2 (Harduin. VII. 85).

without a special mandate from the crown.[1] This practically amounted to an absolute confiscation, as may be seen in the proceedings of various councils of the period; and to quicken the sensibilities of the obdurate, a preliminary mulct of ten livres was added, to be levied on all excommunicates who allowed forty days to pass without seeking reconciliation.[2]

These rules, however, were scarcely applicable to the whole kingdom, and the customary cautious sagacity of St. Louis rendered him wary in pledging his power to the blind support of those who too often used their spiritual jurisdiction for the gratification of malice or ambition. About the year 1250 an assembly of the French bishops held in Paris demanded an interview with St. Louis, and assured him that he was allowing Christianity to be destroyed. The good king crossed himself and asked how that could be, when Guy, Bishop of Auxerre, replied that it was because excommunications were no longer respected, and men preferred to die under the anathema rather than to seek absolution. Therefore they requested him to issue an edict commanding his officers to seize the possessions of all who remained for a year and a day under the censure of the church. To this St. Louis replied that he would willingly do so in all cases where parties were found to be in the wrong towards the church or her ministers. The prelates responded that the secular courts had no authority to investigate such matters, but the king was firm, illustrating his position by the case of the Count of Britanny who remained under excommunication for seven years, while pleading against his clergy, and finally obtained a verdict in his favor from the pope himself. Now, said the king, if I had forced the count to submit at the end of the first year, I should have done wrong to God and man, and it would be contrary to God's justice were I to constrain those whom the clergy have wronged to seek absolution without hearing their appeals. This was unanswerable, and

[1] Ordonn. ann. 1228, § 7 (Isambert, Anc. Lois Franç. I. 233).

[2] Concil. apud Copriniacum ann. 1238 can. 17, 18 (Harduin. VII. 319). —Concil. Biterrens. ann. 1246 can. 36 (Ibid. p. 413).

St. Louis was troubled with no more requests of the kind.[1] Joinville describes this scene as an eye-witness, and his testimony is not to be doubted, yet there is no trace of any such regulations in the legislation attributed to St. Louis. In the collection known as the Établissements it is ordered that the royal officers, when summoned by the bishop, shall seize both person and property of any one remaining under excommunication for a year and a day, without providing for any inquest into the circumstances connected with the case.[2] The people, however, were apparently growing careless of the spiritual thunders of the church, and the prelates were too impatient to await the delay prescribed by law, for, in a synod held in Anjou in 1265, we find a regulation ordering that when any one remained under excommunication for the space of two months, his wife and children should be interdicted and deprived of all the sacraments of the church, except those of baptism and penitence, the reason given for this vicarious outrage being that men were becoming insensible to the censures of the church and required some additional stimulus to obedience.[3] Even the secular law was frequently disregarded, and its observance had to be secured by repeated enactments, such as that of Philip III. shortly after his father's death in 1274, and of Louis X. in 1315,[4] and complaints of its neglect continually arose. The whole subject appears to have been one regulated by no settled principle, for in 1280 the Parlement decided, in a case between the king and the Archbishop of Tours, that the royal officers were not bound to coerce excommunicates by the seizure of persons and property;[5] and yet in the same

[1] Joinville, Histoire de Saint Loys.—This has been considered as the origin of the appellate power exercised by the crown in the *appel comme d'abus* (Isambert I. 358).

[2] Établissements, Liv. I. chap. 123.

[3] Synod. Andegavens. ann. 1265 cap. iii. (D'Achery I. 728). Complaints of the neglect of this rule are uttered in a subsequent synod of 1270 (Ibid. p. 730).

[4] Isambert II. 655, III. 123.

[5] Actes du Parl. de Paris, T. I. p. 362 No. 418 (Paris, 1863).

year, on complaint of the Bishop of Poitiers, it ordered that excommunicates should be punished by the secular power according to custom.[1] Under these conflicting decisions it is no wonder that the royal officials were not alert in seconding the ecclesiastical courts; and in 1291 we find an agreement between the king and the Archbishop of Bourges, wherein the latter promises that he will no longer prosecute the royal bailli to force him to execute the sentence of excommunication on those who happened to have nothing that could be seized.[2] Some, indeed, did not confine themselves to merely the resistance of inertia, for in 1299 Philippe le Bel was obliged to command his baillis in Touraine and Le Mans not to protect excommunicates as they were in the habit of doing, but to constrain them to submission according to the laws.[3]

It thus required repeated enunciations of the principle to secure its observance, and the church was not idle in contributing to the good work. It was no easy task, indeed, to keep the faithful in the due condition of obedience. Occasionally sons of Belial were found who even dared irreverently to retort the censures of the church, by burlesquing the awful rites which symbolized the destruction of their souls. With wisps of lighted straw, tallow candles, pans of burning coals, and other profane contrivances, they mimicked the condemnation passed upon them, to the infinite scandal of all believers. Such hopeless sinners were manifestly beyond the reach of spiritual terrors, and the council of Avignon, in 1326, was compelled to call upon the secular authorities to do their duty in compelling all who remained for two months under excommunication to seek absolution. Judges and seigneurs who

[1] Olim, III. 167.

[2] Actes du Parl. de Paris, T. I. p. 270, No. 2754. Cf. Olim, II. 322–3. For an arrangement with the Bishop of Coutances see Les Olim II. 209.

[3] Guillel. Major. Episc. Andegav. Gest. cap. xliii. (D'Achery Spicileg. II. 194). The troubles in this case arose in the collection of the tithes and aids granted by the church to the king to assist him in his war with Flanders.

neglected this were themselves threatened with the anathema; and if persistently contumacious, their territories were placed under interdict. As though taught by experience, however, that this was insufficient, the church further took the matter of temporal penalties into its own hands, and struck at the pockets of those whose souls were inaccessible, by levying a monthly fine of five sous of good coin on laymen, ten sous on the lower clergy, and fifteen sous on priests, as long as they remained obdurately under the ban.[1] All this seems to have speedily lost its effect, for it had to be repeated eleven years later by the council of 1337.[2] At length the royal power was obliged again to intervene, and in 1363 John II. issued a declaration renewing the old law that those who persistently remained under excommunication should be constrained to seek reconciliation by seizure of both person and property.[3] This seems to have had little effect, for in 1371 the archdeacon of Langres represented to Charles V. that many obstinate sinners did not hesitate to remain excommunicated for ten or even twenty years, all the while frequenting church, to the great scandal of the faithful; and Charles in consequence commanded all judicial officers to coerce offenders to obedience by seizing their property after they had remained for a year or more under excommunication, but he adds a caution which indicates for us one of the prolific sources of abuse in these matters, for he warns his representatives to see that the clerical official does not exact inordinate payment for reconciling the culprits.[4] Churchmen themselves, however, were sometimes negligent in enforcing the rigor of the censure, for the council of Rheims in 1408 found it necessary to threaten priests who, through fear or favor, allowed excommunicates to be present during the celebration of Mass.[5] In spite of such lukewarmness,

[1] Concil. Avenion. ann. 1326 can. 7, 41 (Harduin. VII. 1495, 1508).

[2] Concil. Avenion. ann. 1337 can. 53 (Ibid. 1633).

[3] Isambert, T. V. p. 146.

[4] Ibid. p. 353–5.

[5] Concil. Remens. ann. 1408 cap. 16 (Martene Ampliss. Collect. VII. 418).

the church at large was not backward in pushing the advantages which it had secured from the secular power, for a provision of the concordat of 1516 between Leo X. and Francis I. presents as a concession on the part of the pope, that no place shall be laid under interdict for an offence committed by one of its inhabitants, unless the magistrate or seigneur shall, after receiving notice, delay for forty-eight hours in either compelling the offender to submit or driving him away from his place of residence.[1] When this was a reform, we may judge how summary had been the process by which churchmen had been accustomed to right themselves for real or imaginary wrongs.

With regard to the disabilities of excommunicates, St. Louis provided that they might be heard in lay courts, both as plaintiffs and defendants, but limited them in the ecclesiastical tribunals to appearing only as defendants—that is, they could be prosecuted, but could not prosecute.[2] In this, he was more liberal than his age, and his legislation received little attention. Beaumanoir, the recognized expounder of his jurisprudence, expressly states that no one under excommunication can be witness, pleader, advocate, or judge; and he adds the very sufficient reason that all who should hold converse with him would themselves be excommunicate.[3] The proceedings of the Parlement of Paris show that this was a recognized usage when it required the proof of excommunication to sustain the refusal of an answer to a plaintiff, or the rejection of the testimony of a witness.[4] This is manifested in another case which further suggests the enormous advantage conferred on ecclesiastics by these regulations. Jean Roisel, Mayor of St. Riquier, had brought suit against the Abbot of St. Riquier, and had been thrown out of court on admitting that he was under excommunication. He then brought another suit against

[1] Concordat. ann. 1516 Rubr. 10 (Isambert XII. 92–3).
[2] Établissements, Lib. I. chap. 123.
[3] Contumes du Beauvoisis, cap. v. § 17; cap. xxxix. § 63.
[4] Olim, I. 738.

the abbot in a private quarrel, and endeavored to sustain himself by the ingenious plea that, as his excommunication had been incurred in his public character as mayor, it should not prejudice his legal status as a man, but the Parlement refused to dissociate the excommunicated official from the individual, and decided that he could not be heard in any capacity until he could bring forward evidence of his absolution.[1] Constant vigilance on the part of the church, however, was requisite to enforce the observance of these disabilities. Thus in 1326 we find the council of Avignon renewing the prohibition of excommunicates serving as judges, baillis, assessors, consuls, or notaries. Those who appoint such persons are pronounced excommunicate *ipso facto*, and if they do not force the appointee to resign within ten days their territories are declared under interdict.[2] In the same year, also, the council of Senlis endeavored to enforce the disabilities of excommunicates as plaintiffs and witnesses.[3]

Spain maintained a greater degree of independence of the ecclesiastical power than any other state of mediæval Europe. Her jurisprudence was founded on the Wisigothic Code, enacted at a period anterior to the encroachments of the church, and based on the Roman laws; and the character of her institutions is aptly illustrated by the regulation of the twelfth council of Toledo, in 681, referred to above, which released from excommunication any one whom the king might please to invite to his table. Spain was thus shielded at the outset from the influences which moulded the Carlovingian legislation, and after the rise of the clerical power in the ninth century her internal condition was comparatively free from the necessities which drove the descendants of Charlemagne to seek a suicidal alliance with the hierarchy. Her polity, therefore, retained

[1] Olim, I. 817.

[2] Concil. Avenion. ann. 1326 can. 16 (Harduin. VII. 1500).

[3] Concil. Silvanect. ann. 1326 can. 4 (Ibid. p. 1532).

much of its original character to a comparatively late period.[1] The Fuero Juzgo, or Romance version of the Gothic code, which was not superseded until the thirteenth century, shows no trace of the effort to enforce the censures of the church by secular athority. The only recognition, indeed, of the anathema as an element in the institutions of the Peninsula, is the insertion in that Code of various canons from the Gothic parliaments, known as the councils of Toledo, which liberally threaten excommunication against all who may conspire against the king, or seek to interrupt the succession of the throne.[2] The increased preponderance of the crown, moreover, is manifested by the omission from one of these of a countervailing sentence of expulsion from the church of any monarch who may illegally oppress the people, and the substitution for it of a text inculcating submission to the powers that be, as the representatives of God.[3]

It is easy thus to understand why in Spain the thunders of the church were comparatively innocuous, and how Queen Urraca and her cousin-husband Alfonso of Arragon could safely defy the papal excommunication to which Robert the Pious and Philip I. of France were obliged humbly to submit. It is true that in the debatable land between France and Spain, Nunez Sancho, Count of Roussillon, in 1217, specially excepted excommunicates, with heretics, from the enjoyment of

[1] The popular spirit with regard to the encroachments of Rome is well illustrated in the Romancero del Cid, when that doughty warrior urges his sovereign to defy the Pope who had just decided that Spain was subject to the Holy Roman Empire—

"Enviad vueso mensage
Al Papa, y a su valía,
Ya todas desafiad
De vuesa parte y la mia."
(*Romances Antiguos Españoles*, Londres, 1825, T. I. p. 167.)

[2] Fuero Juzgo Prolog. Ll. 5, 6, 7, 8, 9, 10, 11, 12, 14, 16, 17 (Concil. Toletan. IV. ann. 633 can. 75 —V. ann. 636 can. 2, 3, 4.—VI. ann. 638 can. 17, 18.—VII. ann. 646 can. 1.—XIII. ann. 683 can. 4.—XVI. ann. 693 can. 10.—XVII. ann. 694 can. 7).

[3] Romans XIII. 1–4, inserted in ley IX. from Concil. Toletan. IV. can. 75.

public peace, thus practically rendering them outlaws.[1] In this he only imitated Don Pedro II. of Aragon, who in 1210 issued an edict imposing on excommunicates a fine of 100 solidi for the first four months of contumacy, with 300 solidi additional for the second and third periods, completing the year, one-half of the mulct for the benefit of the royal fisc, and the other to accrue to the bishop of the offender. After the expiration of a year, he could be reconciled only by the pope himself or by a papal legate, and during the whole period of contumacy he was deprived of all legal rights and segregated from all human society, except that of his wife, children, and others permitted by the canons; to the enforcement of all which he pledged the full power of the state.[2] Yet in those portions of Spain further removed from Italian influence, and which had not felt the pressure of the inquisition against heresy, the old independence continued to prevail. When, about the middle of the thirteenth century, Alfonso the Wise of Castile drew up the elaborate code known as the *Siete Partidas*, he devoted no less than thirty-eight laws to the subject of excommunication, thus giving a more complete and detailed body of jurisprudence with regard to it than can elsewhere be found among the labors of secular lawgivers of the period. He professes, indeed, the utmost reverence for ecclesiastical censures, deriving them from the divine examples of the excommunication of the angels whom God changed into devils for their pride, and the excommunication of Adam, when he was ejected from Paradise for disobedience.[3] Yet he gives no intimation of any secular enforcement, beyond the regulation that a man remaining for a year under the ban of the church without seeking reconciliation, if he has been sentenced as a suspected heretic is to be held confessed of heresy; if he is a noble, his

[1] D'Achery Spicileg. III. 588.

[2] Statutum Petri. II. Arag. (Aguirre V. 179). For regulations of 1228 and 1223 by Don Jayme I. see D'Achery, III. 598 and Martene, Ampliss. Collect. VII. 125.

[3] Las Siete Partidas, P. I. Tit. ix. Prœm.

vassals are not bound to obey him while under excommunication; and if possessed of any church patronage or privileges, he is not to enjoy them while thus remaining in antagonism with the church.[1] Alfonso deprecates, moreover, as improper the reprisals occasionally exercised by communities while under interdict, in prohibiting their excommunicator and his men from buying or selling in their town, grinding corn in their mill, baking in their public oven, travelling over their roads and bridges, drawing water from their wells and streams, or cutting wood on their mountains.[2] Evidently in Spain there was a spirit little known elsewhere which enabled the civil power to treat on equal terms with the ecclesiastical, and consequently the effects of excommunication, in this world at least, were much less fearful than in other lands. Although he who associated knowingly with an excommunicate incurred the comparatively light punishment of the minor excommunication, yet even this did not apply to the wife, children, servants, vassals, and hired laborers of the offender, who were not debarred from intercourse with him, nor was it forbidden to give him alms.[3] Modern Spanish fanaticism, however, made amends for this laxity, for the unhappy wretch who remained for a year under excommunication was handed over to the tender mercies of the Inquisition.[4]

In forcible contrast with the mildness of mediæval Castilian legislation is the contemporary jurisprudence of Germany. There the Carlovingian traditions were regarded with special reverence, and the constitution and vicissitudes of the Holy Roman Empire brought church and state into almost inseparable connection. This, in the middle ages, necessarily resulted in the supremacy of the church, and consequently we

[1] Ibid. P. I. Tit. ix. ley 32.—Also in Recopilacion Lib. VIII. Tit. v. l. 12.

[2] Ibid. P. I. Tit. ix. ley 19.—This device was not confined to Spain. It is condemned in 1326 by the council of Marsiac in Guyenne (Concil. Marciac. ann. 1326 can. 47.—Harduin. VII. 1529).

[3] Siete Partidas P. I. Tit. ix. ll. 5, 35.

[4] MS. Bib. Reg. Hafniens. No. 2185 fol. p. 179.

find in the German law of the period that all the claims of Gregory VII. and Innocent III. were not only admitted but enforced by the secular power.

In the Nürnberg decree of 1187, issued by Frederic Barbarossa for the suppression of incendiarism, that crime is punished with proscription. If this does not secure submission, then the offender is to be excommunicated by his bishop, and is not to be absolved until he makes full amends for the damage caused by the arson. On the other hand, whoever is excommunicated by a bishop shall similarly be proscribed by the secular judges, until he shall have been reconciled to the church, which is only to be accomplished by a pilgrimage to the Holy Land, or to the shrine of St. James of Compostella, involving an absence from the empire of at least a year and a day. If he proves obstinate and remains under proscription and excommunication for a year and a day, then he becomes an outlaw, deprived of all legal rights.[1] The church had succeeded in humbling the central power and perpetuating the anarchy of Germany, and the authority which thus was rendered unable to enforce the law was obliged to implore the assistance of the church, and to pay for that assistance by placing its forces at the disposal of the spiritual courts. It is the old story of the Carlovingians repeated at a period when the church was more fully able to take advantage of its opportunities.

When Barbarossa's grandson, Frederic II., received the imperial crown in 1220, at the hands of Honorius III., the coronation ceremonies were varied by a solemn excommunication, with bell, book, and candle, launched by the pope against all who should promulgate or enforce laws infringing the privileges of the church. All who were connected in any way with such laws, from the monarch in whose name they were issued, to the officers executing them, and the scribes engrossing them, were declared anathematized *ipso facto*, unless

[1] Feudor. Lib. v. Tit. x.—Cf. Conrad. Ursperg. ann. 1187.

within sixty days the laws were annulled or repealed.[1] This was forthwith confirmed by Frederic, in an edict by which he surrendered the power of the state unreservedly, without even asking for an equivalent. Any one incurring excommunication for infringing the liberties of the church, and so remaining for a year, was threatened with the imperial ban until he should obtain absolution. If excommunicated for harboring heretics, and not reconciled within a year, he was declared infamous and ineligible to any office or place of trust, disabled from bequeathing or receiving inheritance, from bearing witness, and from appearing as plaintiff. If a judge, his verdicts were null and he could try no causes; if an advocate, he had no standing in court; and if a notary, his official documents were void.[2]

When such laws as these were wrung from monarchs whose whole lives were consumed in an internecine conflict with the papal power, it is not surprising to find that the principles which they thus were compelled to admit were developed even more fully in the pretensions advanced by the church. Already, in 1266, the council of Cologne directs the excommunication of any secular magistrate who shall refuse or neglect to compel the submission of any one remaining under excommunication for a year;[3] and even this became exceeded in the popular jurisprudence of the empire. The civil and the ecclesiastical powers were bound together with the closest requirements of mutual support, yet with the supremacy of the spiritual authority fully admitted in the last resort. Thus, in the Suabian law, which ruled all Southern Germany, it is declared to be in virtue of an agreement entered into between

[1] This decree was not of mere momentary force. It was quoted in 1236 as a rule of the church by Gregory IX. to Thibaut of Navarre (Martene, Thesaur. I. 996).

[2] Const. Frid. II. post Lib. Feudor. §§ 3, 8.—The latter of these was even interpolated in the Code of Justinian, Post Const. 4, Cod. I. v.—Cf. Capit. Gregor. IX. ann. 1235 (Harduin. VII. 163–4).

[3] Concil. Coloniens. ann. 1266 can. 37, 38 (Harduin. VII. 575).

Constantine the Great and Sylvester I., that any one remaining under excommunication for six weeks and a day is to be proscribed by the lay courts; and similarly proscription, after the same interval, is to be followed by excommunication; and whichever of the two penalties has been first inflicted is to be removed before the other is removable.[1] In fact, he who was either excommunicated or proscribed was held to be both excommunicated and proscribed; he had no standing in court except as a defendant; he could neither ask for a verdict nor appeal from one, nor act as a witness or judge—in short, he was deprived of all legal protection in both secular and ecclesiastical tribunals.[2] The universality of spiritual jurisdiction was established by empowering the bishops, at their annual councils, to summon before them all laymen of their dioceses, from prince to peasant, and authorizing the prelates to excommunicate any one who neglected or disobeyed the summons.[3] The supremacy of the church, moreover, was admitted by two provisions. One of these directs the bishops to excommunicate any prince or potentate who neglects to persecute heresy; if he remains obdurate for a year, the bishop is then to report the case to the pope, who is thereupon to deprive him of his rank and honors, and the secular power shall enforce the sentence by stripping him of all his possessions.[4] The other authorizes the pope to place the emperor under ban if he deviates from orthodoxy, deserts his wife, or destroys the churches.[5] The severity of the excommunication thus liberally

[1] Juris Provin. Alaman. Ed. Senckenberg. cap. 1, 2, 3, 100 (Ed. Schilter cap. 1, 242, 89).

[2] Jur. Prov. Alaman. cap. 127, 115, 78, 75 (Ed. Schilter cap. 272, 165, 15, 68).

[3] Ibid. cap. 11 (Ed. Schilter cap. 128).

[4] Ibid. cap. 351 (Ed. Schilter cap. 308). Yet when Leo X. in 1520 endeavored to enforce this rule, in the Bull Exsurge Domine, against the protectors of Lutheranism, the German legists declared that it was unconstitutional, relying, apparently, on the provisions of the Sachsenspiegel.

[5] Ibid. cap. 29 (Ed. Schilter, cap. 111).

denounced contrasts strongly with the laxity of the contemporary Spanish laws. Any one conversing familiarly with a known excommunicate was likewise excommunicated, and, if he failed to obtain absolution within the prescribed period of six weeks and a day, he was held guilty of the crime for which the first excommunication had been incurred.[1] Under legislation such as this the responsibility of the secular authorities for the obedience of the individual was thorough and complete. In 1465, George, Bishop of Bamberg, considered it a relaxation of the strictness of the rule, when he declared that a town was not necessarily under interdict because one of its inhabitants was excommunicated, and he mercifully provided that the authorities should have two days in which to enforce his submission or to eject him.[2]

Yet, in so turbulent a period, laws like these were easier to frame than to enforce. There is extant a supplication addressed to Rodolph of Hapsburg, in which a bishop complains of two brothers whom he had excommunicated for robbery, rapine, and numerous other crimes. They retorted by making war upon him, whereupon after due proceedings he had deprived them of the fiefs held of his church. They laughed this to scorn, and, after two years of unavailing efforts to enforce the censures, the bishop finally appeals to the emperor to put the offenders under the ban of proscription.[3]

Northern Germany, however, was by no means disposed to yield the same implicit obedience to the demands of the church. The Sachsenspiegel, which was the recognized code of the North, as the Schwabenspiegel was of the South, expressly declared that no one could be deprived by excommunication of the privileges of the common or feudal law unless the ex-

[1] Ibid. cap. 11 (Ed. Schilter, cap. 351). This forms part of a law specially directed against usury, but the terms employed are general, and warrant the assumption that it was not confined in its application to that single offence.

[2] Georgii I. Episc. Bamberg Reform. Consistorii art. xxxiv. (Ludewig, Script. Rer. German. I. 1178).

[3] Cod. Epist. Rodolphi I. p. 199 (Lipsiæ, 1806).

communicate was put under ban by the emperor. The censures of the church, indeed, were specially asserted to be directed against the soul, and they could have no effect upon the temporal condition of the sinner. This was repeated in the burgher-law of the Saxon cities, which stoutly maintained that even the censures of the pope, if unjustly bestowed, did not derogate from the rights of the citizen, although he might remain under them for a year and a day. This, together with several other manifestations of the same spirit of independence, caused the code to be regarded with extreme disfavor by the church. It was condemned and anathematized in 1374 by Gregory XI., and all good Christians were forbidden to obey it. Teutonic stubbornness, however, was not readily overcome, and the Sachsenspiegel remained in force, notwithstanding that the condemnation was emphatically repeated by the council of Bâle and Eugenius IV.[1]

In Italy the authority of the church was weaker than elsewhere. According to mediæval theory that authority was derived from the successor of St. Peter, and to the Italians the pope was invested with little of that awful and mysterious dignity which rendered his name a word of power in distant and more barbarous regions. They knew him as a secular prince, vindicating his claims to obedience by the arm of flesh as well as by the power of the Word, and they had too often successfully withstood his pretensions to feel much dread of his curses when not restrained by his legions. This is strikingly manifest in the Neapolitan code of the Emperor Frederic II. We have seen him, in 1220, at Roncaglia, in his capacity as emperor, invoke the aid of the church to uproot heresy, and pledge the full power of the state to sustain her censures, both in cases of suspected faith and of infringement of her liberties. In the

[1] Specul. Saxon. Lib. III. art. 63.—Sachsische Weichbild, art. v. § 1. —Raynald. Annal. Eccles. ann. 1374 No. 12.—Gryphiand. de Weichbild. Saxon. cap. 47. But the Weichbild, art. iv. § 6, classes the excommunicate with the proscribed.

freer air, however, of his hereditary kingdom of Sicily, he was careful to keep her at arm's length, and jealously maintained the independence of secular jurisdiction. In the Sicilian Constitutions there is no allusion to excommunication. The state did not call upon the church to aid in enforcing the secular law, nor would it allow itself to be called on to enforce the judgments of the church by temporal penalties. This is particularly significant when we find the lawgiver regulating many questions as to heresy, usury, tithes, marriage, incest, adultery, perjury, sorcery, testaments, and inheritance, which at that period were generally conceded to belong almost exclusively to ecclesiastical jurisdiction;[1] and the intention of the legislator is rendered unquestionable by the care with which he limits the immunity of the clergy from the civil tribunals, and prohibits them from any share in administering the laws.[2]

At the other extremity of Italy, when the pressure from Germany was removed, there was equal alacrity on the part of the independent states in disregarding the claims and pretensions of the church. Thus Milan, in 1347, decided that the clergy were bound, equally with the laity, by all the details of municipal law;[3] and in 1388 Gian Galeazzo Visconti, the first Duke of Milan, struck a blow at the whole system of excommunication by a decree in which he released all laymen from the necessity of answering a summons from the ecclesiastical courts—clerks were to be tried by clerical judges, and laymen by laymen alone.[4] Whatever may have been the motives which prompted the wily Visconti to this extraordinary attack upon the jurisdiction and prerogatives of the church, it was altogether too much in advance of the age for even his power

[1] Constit. Sicularum Lib. I. Tit. 1, 2, 3, Tit. 5 cap. 2, Tit. 7 cap. 1.—Lib. II. Tit. 11, Tit. 38 cap. 2.—Lib. III. Tit. 25, Tit. 40 cap. 7, Tit. 42 cap. 2, 3, Tit. 43, 44, 45, 47, 49, 50, 59.—In the whole code the only offence committed to the jurisdiction of the church is that of adultery (Lib. III. Tit. 51).

[2] Ibid. Lib. I. Tit. 46, 68, 65, Tit. 66 cap. 2, Tit. 72.

[3] Antiqua Ducum Mediolani Decreta (Mediolan. 1664, p. 3).

[4] Ibid. p. 136.

to sustain it, and in the following year we find him limiting the decree in various essential particulars.[1] Yet it stands upon the statute-book to show how precarious in Italy was the hold of the church on those prerogatives which kept the rest of Latin Christendom in subjection.

Poland was, probably from its contamination by the Greek schismatics, even less disposed than Italy to invest the sentence of excommunication with temporal terrors. In 1346, the statute of Vislitza declares that if the evidence of an excommunicate was requisite in a suit, and if the excommunicator refused absolution, then the testimony of the witness could be given as freely as though he were in full communion. This manifests so complete disregard of the sanctity claimed by the church for all its acts that we can readily believe the statement that by the commencement of the fifteenth century the anathema entailed no legal or political disabilities, and was consequently but little regarded by the people.[2]

The Northern nations were guilty of no such insubordination. In Sweden, for instance, the inviolability of ecclesiastical censures was protected with relentless ferocity. By the laws in force until the time of the Reformation, if a man remained under excommunication for a year, without seeking absolution, the bishop reported him to the king, and the king was bound to put him to death. His body was denied Christian sepulture, and his relatives could claim no *wer-gild* or blood money, though his heirs were not disinherited.[3] Among the free Frisians, any one interfering to prevent the prelates from absolutely coercing offenders among their flocks was subjected to the heavy fine of 20 marcs.[4]

In Hungary, the secular powers were bound to subdue excommunicates by the seizure of all their possessions. Any

[1] Ibid. pp. 158–9.

[2] Krasinski, Reformation in Poland, I. 109.

[3] Ragvald. Ll. Suecorum Lib. I. cap. xiv. (Stockholmiæ, 1614, p. 23).

[4] Ll. Opstalbomicar. ann. 1323 § 4.

judge who admitted an excommunicate to appear as plaintiff, advocate, or witness, was suspended for a month from his functions, and the judgment rendered in such a case was null and void.[1]

Thus supported by the jurisprudence of nearly all Europe, it is no wonder that the church could assume as a general principle that all secular magistrates were obliged to exercise their authority at the call of the bishops, and that any one neglecting thus to perform his duty in enforcing the mandates of the ecclesiastical power, was, after three summons, himself liable to excommunication.[2] Nor has the church by any means abandoned this claim, the exercise of which is only prevented by the irreligious tendencies of the age. In the concordat of 1863, concluded between the papacy and the South American republics, there is an article expressly providing that the secular authorities shall execute every penalty decreed by the ecclesiastical tribunals.[3]

ABUSE OF EXCOMMUNICATION.

With the power of the state thus at command, the authority of the church became almost illimitable. It was not only available in reducing to submission the proudest monarchs of Christendom, but it extended to the minutest details of daily life. The canons might repeat with ceaseless iteration that excommunication was a spiritual sword which should only be unsheathed in the cause of God, and for weighty reasons; but the cause of every churchman was the cause of the church, and the cause of the church was the cause of God. The rule that no

[1] Concil. Budens. ann. 1279 can. lv. lvii. (Harduin. VII. 808–9).

[2] C. A. Thesauri de Pœnis Eccles., Ferrariæ, 1761, p. 169.

[3] "Janus," The Pope and the Council, London, 1869, p. 12.

one could be judge in his own case thus was disregarded in the zeal to punish the wrongs offered to God in the persons of His servants, and private enmity gratified itself under the guise of holy fervor.[1] It is not in human nature to resist the temptation of abusing a power so tremendous and so irresponsible, and the warnings to be temperate in its exercise met with little respect from the highest as from the lowest. A well-informed writer in the early part of the fourteenth century deplores the grave scandals arising from the fact that more than half of the Christians then existing, including the most devoted sons of the church, were at that time under excommunication.[2]

Not only, moreover, were offenders themselves doomed to eternal perdition, but their innocent children and descendants were likewise devoted to Satan with a refinement of cruelty which renders it almost impossible to believe that those who administered the curse could have had faith in its efficacy. We have already seen that Martin V. thus sentenced the children of those who should give a cup of water to the adherents of his rival, Pedro de Luna; and Gregory XI. went even further when, in 1375, he excommunicated the Florentines and their leaders, Francisco and Baptisto de Vico, with their descendants to the seventh generation, for procuring the rebellion of the papal territories.[3]

One fertile source of oppression is suggested by the case above cited of the Abbot of St. Riquier and Mayor Roisel. As the excommunicate was what the old English law denominated a "lawless man"—one who could claim no protection under the law—it is easy to see that when a quarrel arose between a prelate and a layman, the former could fulminate the anathema against his adversary, who thenceforth had no stand-

[1] Cf. Alvari Pelagii de Planctu Eccles. Lib. II. Art. xx. cap. 34, 35.

[2] Marini Sanuti Epist. xvii. (Bongars. Gesta Dei per Francos II. 310). Sanuti was a Venetian who devoted his life to rousing Christendom for the recovery of the Holy Land. The above assertion is contained in a letter addressed to a cardinal and papal legate.

[3] Chron. Cornel. Zanfliet ann. 1375 (Martene Ampl. Coll. V. 304).

ing in court until he could procure absolution from his excommunicator, thus practically placing him at the mercy of his antagonist, who could exact his own terms for reconcilation. It mattered not whether the excommunication was legal or illegal, justifiable or unjustifiable. The False Decretals had promulgated the doctrine that the episcopal sentence, even when groundless, was to be respected,[1] and this principle became freely admitted in practice.[2] Beaumanoir advises any one summoned to an ecclesiastical court to obey the summons promptly, whether subject to its jurisdiction or not, for if he fails to appear, he will be excommunicated—"et li escommeniement font à douter, comment qu'il soient geté, soit à tort, soit à droit."[3] About the same period, Alfonso the Wise of Castile, in his code of laws, declares that though it is a grave sin to excommunicate without cause, yet he who is thus excommunicated can only submit until he is absolved.[4] It thus gradually came to be established that however illicit an excommunication might be, it yet was valid;[5] and so thoroughly was the customary abuse of this tremendous power recognized, that popes sometimes, in virtue of their supreme authority, granted as a special privilege the right not to be excommunicated without cause. A bull of this nature is extant, issued by Celestin III. in 1193, in favor of the monastery of Nieuwerke,[6] and another by Innocent III. in 1207, for the protection of an archbishop.[7]

It could hardly be expected, indeed, that papal monitions to be moderate in the exercise of power should be heeded when the papacy itself set the example of the most flagrant abuse. In the insatiable greed of the Roman curia, for instance, not

[1] Pseudo-Urbani Epist. cap. v.

[2] Gratian. P. II. caus. xi. q. iii. can. 27.

[3] Coutumes du Beauvoisis, cap. II. § 28.

[4] Las Siete Partidas, P. I. Tit. ix. ll. 20, 21.

[5] Avila de Censuris Eccles. P. II. cap. v. Disput. ii. Dub. 1, Conclus. 4.

[6] Ludewig Reliq. Mssctor. T. v. p. 64.

[7] Innocent. PP. III. Regest. Lib. x. Epist. 36.

only was the right of confirming the election of bishops turned to account by grasping the annates, but, in defiance of all the canons against simony, the creatures of the court exacted heavy fees under pretence of free gifts. In process of time this custom became so thoroughly established that those who were niggard or dilatory were formally excommunicated ; and Peter Boerius, Bishop of Orvieto, in the latter part of the fourteenth century, relates that no less than seven bishops were thus under the ban of the church at one time for not gratifying the expectations of the cardinals.[1] Finally, indeed, a regular form of monition was drawn up by the curia and served on all bishops, archbishops, and patriarchs on their application to Rome for confirmation. This specified the sum that was expected of them by the cardinals; if they should die before its payment, it was to be paid by their successors, and failure to settle by the specified time entailed the penalty of excommunication.[2] As for the annates, they were the constant source of excommunication launched against the prelates of Christendom.[3]

When we consider the materials of which the hierarchy was composed and the influences which secured preferment to its highest places, it is therefore no wonder if the tremendous power thus confided to unworthy hands was abused for private ends and in the most shocking manner. Mediæval history is full of this prostitution of the name and authority of Christ by those who professed to be acting in His name and for His cause.

In 1149 Wibald, Abbot of Corvey, reproved a rebellious member of his convent who was in the habit of excommuni-

[1] Gloss. ad Vit. Pontificum (Baluze et Mansi Miscell. T. I. p. 479). Ecclesiastics seemed to know too much of the machinery of excommunication to feel for it the implicit respect that was expected of laymen. In 1207 we find the church of Cologne inquiring of Innocent III. what should be done in cases where abbots and abbesses bestowed preferment on clerks who were under excommunication, and how they could be compelled to respect an interdict.—Innocent PP. III. Regest. Lib. x. Epist. 62.

[2] A copy of one of these remarkable documents is given in full by Von der Hardt, Concil. Constant. T. I. P. V. p. 159.

[3] Quia communiter prælatus excommunicatur per illas.—Card. Zabarellæ Capita agend. in Concil. cap. ix. (Ibid. P. ix. p. 518).

cating the person and family of a merchant with whom he had a quarrel; and as he did not exactly dare to anathematize his abbot and prior, he celebrated mass against them continuously, under an impression that his vindictive feelings while engaged in the ineffable mysteries would work some damage to their health and prosperity.[1] In 1163 the Archbishop of Rheims placed the town of Beauvais under an interdict in consequence of a quarrel between two women about a house, and when Louis VII. applied to Alexander III. to remove it, the pontiff declined to interfere except by remonstrance.[2] Among the extant letters of Rodolph of Hapsburg is one addressed to a bishop who had excommunicated all the inhabitants of a city because one of their number had killed a servant of his and had escaped by flight, nor would the anger of the prelate at the murder of his follower allow the punishment of the innocent to be relaxed until the emperor was forced to intervene and remonstrate with him.[3] There was more of sacrilege, but hardly a less Christian determination to abuse the incalculable power of the Eucharist, in the case of the curé of St. John the Less at Lyons who was burnt alive in 1548 for singing mass with an unconsecrated Host. He confessed on his trial that he had resorted to this underhand method of excommunication for the purpose of damning his parishioners with whom he had a lawsuit, by thus making them unconsciously commit the sin of idolatry.[4]

Prelates, however, were not reduced to the necessity of employing impious subterfuges such as this, and the above example of the German bishop was by no means an unusual or extreme one. When the Regent Blanche in 1233 seized the regalia of the province of Rouen, Maurice the Archbishop retorted by proclaiming an interdict over his whole diocese, and maintaining it for more than a year, until the court had to

[1] Wibaldi Abbat. Corbeiens. Epist. CLVII. (Martene Ampl. Collect. II. 351).

[2] Alex. PP. III. Epist. 133, 134 (Patrol. T. CC. pp. 199–200).

[3] Cod. Epist. Rodolph. I. p. 248 (Lipsiæ 1806).

[4] Bodin. de Magor. Dæmonoman. Basil 1581, p. 403.

give way and surrender the property with all the revenues that had been collected.[1] This disposition to use their authority over Heaven to promote their worldly ends is well illustrated by the quarrel which arose in 1253 when Henri de Suze endeavored to levy an illegal tax on the citizens of Embrun, of which place he was archbishop. The community resisted so vivaciously that he was forced to leave the town, and the matter was referred to the pope, who appointed the Bishop of Senez as an arbiter. As this prelate was a suffragan of the archbishop he could hardly be regarded as an impartial judge, and he naturally was unable to reconcile the parties. In April, 1254, therefore, the archbishop excommunicated the inhabitants, but they still refused submission, and after a year's grace, in May, 1255, he fulminated a more decisive anathema against them, which is a fair example of the manner in which the spirit of the Gospel was lost in the all-absorbing interests of the temporal power:—

"I. If the consuls and inhabitants of Embrun do not return to their duty by St. John's day they are declared thenceforth infamous, incapable of thereafter executing testaments, of bearing witness, or of exercising any public function, and in addition they shall be banished.

"II. All those who have served as consuls since the date of excommunication shall be disabled from holding any office of dignity. All the acts of their consulate are hereby declared null and void.

"III. All citizens who have been candidates for the consulships or municipal council of Embrun are declared infamous and perjured; and those who have favored them or may favor them are excommunicated. All the inhabitants more than fourteen years of age who have obeyed the consuls or have been willing to obey them are likewise declared infamous and excommunicate.

"IV. All ecclesiastics are forbidden to enter the town of Embrun; and all towns, villages, and hamlets of the diocese are prohibited

[1] Fragment. Chron. Rotomag (D'Achery Spicileg. III. 614). In the maturity of his power, however, St. Louis procured from Alexander IV. a privilege prohibiting all prelates from issuing interdicts in France without special papal authority (Ibid. p. 634).

from receiving or harboring the inhabitants of Embrun under pain of sharing in the interdict during their stay.

"V. All testaments, contracts of marriage, and other acts which may be executed in Embrun and other interdicted places are declared null and void, especially those to which excommunicates are parties. All children born of such unions are declared bastard and not heritable, notwithstanding the ignorance of those who may have contracted the marriage.

"VI. The curates and chaplains of the Maritime Alps are ordered to publish these presents on all Sundays and holidays. All who during the interdict shall frequent the market of Embrun, shall sell provisions to the inhabitants, or shall assist them in any manner whatsoever, shall appear before the archbishop to answer for their disobedience.

"VII. The present interdict shall be addressed to all bishops, abbots, priors, convents, and other ecclesiastics, with prohibition to receive any of the inhabitants of Embrun, or any messenger from its pretended magistrates. All confessors are moreover forbidden to absolve any of the said inhabitants without special permission.

"VIII. The bodies of all persons dying under the said excommunication shall be hung upon trees. Any one burying them, even in the fields, is declared unworthy of sepulture until St. John's day."[1]

As during the next year, 1256, the archbishop is found in peaceable possession of his city, we may fairly conclude that even his stubborn flock were unable to maintain their ground against so ruthless a proscription as this.

In sentences of this kind it is worthy of note how completely the spiritual penalties had become absorbed in the temporal punishment. The alliance between church and state had done its work, and the church, secularized in its aspirations, relied rather upon the sword of flesh which it had succeeded in grasping than upon the sword of the spirit which it claimed to have received from the apostles. Thus the power to refuse the rites of Christian sepulture, not content with merely denying all funeral ceremonies, expands into a prohibition even to hide the body of the excommunicate in the bosom of mother earth.

[1] Gautier, Hist. de la Ville de Gap, Notes, pp. 208–10 (Gap, 1844).

The corpse is to be suspended on a tree, and rotting in the air is to carry dreadful warning and example to the senses of those whose souls are too hardened or too obtuse to fear the threat of eternal punishment. This was no invention of the Archbishop of Embrun. It was the recognized penalty attached by the church to all who died under her censure. In 1031 the Bishop of Cahors edified the council of Limoges with an account of a miracle that had occurred under his own supervision, showing that Heaven approved of this regulation. The body of a certain knight who had died excommunicated for spoiling the church was forcibly buried by his companions in consecrated ground, but without funeral rites. Next morning the corpse was found lying naked on the ground beyond the cemetery, while the grave presented no signs of having been touched. On opening it the grave-clothes were found; the body was again buried, and the spot covered with an enormous pile of stones, but to no effect, for the next day the body was found thrown out as before. This was repeated five times, until the noble friends of the deceased, appalled by the warning, allowed the body to lie unburied, and sought reconciliation to the church.[1] When the rule was thus divinely enforced it is no wonder that the church adhered to it. In 1260 the council of Cognac prohibited all dead excommunicates from being covered with stones even above ground;[2] while in Iceland the attempt to bury a corpse to which sepulture had been interdicted was punished with exile.[3] The custom was observed even when the excommunication itself was despised. Thus, when in 1239 Gregory IX. anathematized Frederic II. in the vain hope of staying the progress of his victorious arms

[1] Concil. Lemovicens. II. Sess. II. (Harduin. T. VI. P. I. pp. 884–5).

[2] Concil. Copriniac. ann. 1260 can. 15 (Harduin. VII. 532).—Cf. Ducange s. v. *Imblocatus*.

[3] Kristinrettr Thorlaks oc Ketils, cap. VII. XLVIII. (Havniæ, 1776, pp. 37, 171). In the Icelandic church there were regular fees for sepulture established by law, as well as for other sacerdotal ministrations, even to the consecration of a church by a bishop.—Ibid. cap. V. XIV. XV.

in Italy, and ordered his subjects to elect another emperor, the Germans treated the papal fulmination with absolute contempt. The Bishop of Passau even soundly pummelled and cast into jail the nuncio who bore the apostolic commands, and the whole nation asserted its independence of Roman control. Yet when Eberhardt of Salzburg died in 1246 under excommunication for sharing in this disobedience, although he had quietly exercised his archiepiscopal functions without interruption, his body was refused sepulture, and lay at Radstadt until 1288, when it was finally brought to Salzburg and magnificently interred.[1] This gave rise to a curious abuse, condemned by the Synod of Anjou in 1275. Malignant people would sometimes procure letters of excommunication against their enemies and hold them secretly until the death of the unfortunate, who, ignorant of the sentence, would thus die without absolution, and, on the production of the letters, would be denied Christian sepulture.[2] The Synod, to put an end to this, ordered that all letters of excommunication should be published within fifteen days of their execution—but the fact that such wrongs could be committed, involving secret trial and sentence without notice to the party accused, shows how thoroughly corrupt the whole system had become and how easily it could be worked to gratify private malice and enmity.

Usurers, as being *ipso facto* excommunicate, were similarly denied Christian burial, and in 1456 the Bishop of St. Andree complained to the council of Salzburg that the mendicant friars dared to give funeral rites to notorious offenders of this kind, without exacting satisfaction from the heirs, to the great injury of the priesthood.[3] About the same period, a Synod of Amiens prescribed that the bodies of impenitent excommunicates should

[1] Dalham Concil. Salisburgens. pp. 91-99.

[2] Synod. Andegav. ann. 1275 cap. 2 (D'Achery I. 732).

[3] Concil. Salisburg. XXXVIII. (Dalham, op. cit. 233). Even as late as 1569 a formal body of ecclesiastical law adopted by a council of Salzburg forbade Christian sepulture to usurers (Concil. Salisburg. XLVI. const. li. cap. 9.—Dalham, p. 505).

be enclosed in a box and placed on top of a wall, or be hung on trees.[1] In process of time, indeed, the strictness of the rule was relaxed in some places, where the clergy found it more profitable to be merciful. George, Bishop of Bamberg, issued in 1465 a scale of prices for all the processes of his episcopal court, to restrain the grasping venality of the officials, and in this document he defines that the fee for burying the body of an excommunicate shall be properly proportioned to the estate of the defunct.[2] It is evident, therefore, that the absolute refusal of sepulture was no longer rigidly enforced in his diocese, and, in fact, with advancing civilization it became admitted that a dead excommunicate, who had been buried in consecrated ground, could be reconciled by digging up his body and scourging it, by way of penance; and a still greater relaxation was introduced when the rule became established that if the defunct had manifested signs of contrition on his death-bed, the church might satisfy its sensibilities by merely scourging the tomb, without exhuming the corpse.[3] The scourging of the remains of an excommunicate had long been, as we have already seen (p. 384), one of the modes adopted of admitting him to salvation. It would seem that even in earlier times a proceeding so repugnant to all human sensibilities as the denial of sepulture could not have been universally carried out, for if it had been it would have demonstrated the falsity of a wide-spread belief that the corpse of an excommunicate, though it might decay, was practically indestructible, and would remain for an indefinite period in a putrid condition. Adam of Bremen relates a case in which a body thus was preserved for seventy-five years, until a pious bishop removed the excommunication, when it incontinently crumbled into dust; and

[1] Synod. Ambianens. cap. vi. No. 6 (Martene Ampl. Coll. VII. 1262).

[2] Georgii I. Episc. Bamberg. Reform. Consistorii Art. xlii. (Ludewig Script. Rer. German. I. 1183).

[3] Azpilcueta Manualis Confessariorum cap. xxvi. No. 32 (Venetiis, 1584).

two centuries later Matthew Paris shows that the superstition still existed.[1]

Thus, although the temporal penalties formed the most efficient feature of excommunication, yet its spiritual and superhuman effects were by no means abandoned. These were materialized, however, to suit the grosser superstitions of the age, and men were taught that nature itself was subject to the awful and mysterious ban of the church. On sensitive and spiritual natures the curse doubtless often worked its own fulfilment. Adam, a monk of Locheim, early in the thirteenth century used to relate of himself that when a boy, studying in the conventual school of Bocke, he one day wandered into the cemetery where there was a pile of bricks provided for the building of an oratory. Picking up one of them he commenced to write upon it, when his teacher seeing him exclaimed, "Put it down, for you are excommunicated." Instantly he was struck with sickness, which continued until he was given up as dying, the last rites were performed, and he was only saved miraculously by the intervention of St. Nicholas and St. Paternianus.[2] Not less potent were the effects of the curse on inanimate nature. Not only were the bodies of the dead rendered imperishable witnesses of the doom reserved in another world for the disobedient, but even in this world, if the stubborn soul of man was insensible, the dreadful curse could wither into sterility his lands and his flocks, for God had given the earth to His church, and the blessings of kindly nature were to be enjoyed only on condition of submission to its behests.

From time immemorial up to the Revolution of 1789, an annual tribute of 30 sous Morlaas was regularly paid by the Valley of Saint-Savin in Bigorre, to the Valley of Aspe in Béarn. The origin of this custom, as explicitly set forth in formal legal documents of 1348 and 1592, was as follows:

[1] Adam. Bremens. Gest. Pontif. Hamburg. Lib. II. cap. 31.—Matt. Paris ann. 1245 (Ed. Paris. 1644, p. 464).

[2] Cæsar. Heisterbach. Dial. Mirac. Dist. VIII. c. lxxiv.

The people of Aspe made a sudden raid upon their neighbors of Saint-Savin, when, to arrest the course of the invaders, an abbot climbed into an elder-tree and so paralyzed them by his magic arts that they allowed themselves to be slaughtered without resistance. The pope, informed of this shocking carnage, cast an interdict on Saint-Savin, and for seven years it was cursed with absolute sterility—women bore no children, cattle gave no increase, and the land produced no fruit. To expiate its crime and to gain absolution the Valley of Saint-Savin at last agreed to pay tribute to Aspe, and the memory of its punishment and expiation was thus regularly handed down to modern times.[1]

From this example it is not difficult to understand how the excommunication of animals and inanimate objects came to be, if not a matter of everyday occurrence, at all events a recognized portion of the attributes and functions of the church. Shortly after St. Bernard had founded his ascetic community at Clairvaux, a monk of a less rigid order planted a vineyard in the neighborhood. Two of the Bernardines, regarding this as a scandalous derogation from the austerity of monastic life, after vainly expostulating with brother Christian the cultivator, informed him that he should never taste the fruit of his labors, and proceeded to excommunicate the vineyard. It never thrived, and Christian died without seeing it come into bearing. After years of resultless labor had been spent upon it, at length the owner came to St. Bernard and complained of the curse of barrenness which had been inflicted on it by the excommunication of his brethren, when the pitying saint caused a basin of water to be brought, blessed it, and told the vine-dresser to sprinkle it over the accursed ground. The vines thenceforth grew luxuriantly, and bore such abundant crops that they were the admiration of all beholders.[2] It will be observed here that it was not the sanctity of the monks but the

[1] Lagrèze, Hist. du Droit dans les Pyrénées, Paris, 1867, p. 339.

[2] Joann. Eremit. Vit. S. Bernardi Lib. II. cap. 10.

anathema itself which inflicted the curse of barrenness; and such was the fact also in a case reported by Chassanée, where a priest excommunicated an orchard of which the tempting fruit enticed away the children of the vicinage from attendance upon divine service. It immediately ceased bearing, and remained sterile until the curse was removed at the special request of the Dowager Duchess of Burgundy.[1] A more beneficent exertion of the same awful power was that which in the first half of the twelfth century was wrought by St. Bertrand, Bishop of Comminges, when at the prayer of some poor peasants of his flock he cursed the tares which infested their fields, and thenceforth the pernicious weeds ceased to exhaust the fertility of the soil.[2]

Excommunication of animals, however, was much more frequent than that of inanimate objects. The earliest instance with which I have met occurred about 975, when the pious Ecgbehrt, Archbishop of Trèves, was saying mass in the church of St. Peter, and an irreligious swallow, which was circling around the temple, had the audacity to soil his reverend head. He promptly cursed the birds, and it was thenceforth observed that they kept scrupulously out of the holy precincts, or if one, bolder than the rest, ventured to intrude, it expiated its fault by promptly falling dead upon the sacred pavement.[3] Another example occurred in 1120, when a bishop of Laon excommunicated the caterpillars, which were ravaging his diocese, with the same formula as that employed the previous year by the council of Rheims in cursing the priests who persisted in marrying in spite of the canons.[4] What success attended his efforts is not on record, but soon afterwards St. Bernard found the remedy effectual when, preaching in the monastery of Foigny, which he founded in 1121, he was interrupted by

[1] Agnel, Curiosités Judiciaires du Moyen-Age, Paris, 1858, p. 26.

[2] Vita S. Bertrandi Convenar. No. 21 (Martene Ampliss. Collect. VI. 1032).

[3] Gestæ Trevir. Archiep. cap. xi. (Martene Ampliss. Collect. IV. 158).

[4] Desmaze, Pénalités Anciennes, Paris, 1866, pp. 31–2.

swarms of irreligious flies whose buzzing sorely tried the patience of the orator and the attention of his audience. Wearied beyond endurance, the saint at last exclaimed to his tormentors, "I excommunicate you," and next morning they were found lying dead upon the floor of the chapel in such multitudes that they had to be swept out.[1]

In all these cases it is observable how completely the original idea of excommunication—the depriving a sinner of participation in a sacrament of which he was unworthy—is lost in the secondary notion of a ban or curse inflicted on persons or things who never had enjoyed or could enjoy communion. Perhaps the most extraordinary instance of this extension of the formula is to be found in a story related of St. Bernard, in which that holy person actually and successfully excommunicated the devil. A woman for six years had been in constant commerce with a demon incubus of whom she could not get rid. St. Bernard happening to come into the neighborhood, she formed the intention of appealing to him, whereupon the demon threatened her with the most fearful torments if she should dare to do so. In spite of this, she carried out her intention, when the saint obligingly and with much ceremony performed the rite of excommunicating the evil spirit, who thereupon departed and left in peace his female partner in guilt.[2] The church thus is no longer merely the custodian of the body and blood of the Redeemer, but has acquired the attributes of the Deity, the power to bless or to curse, and excommunication is only the traditional form through which to convey the ban that works woe in this world and the next. In all ages the saints, peculiarly favored of God, were enabled by divine grace to work miracles, but the formula of excommunication embodied the collective authority of the church,

[1] Guillelmi S. Theod. Vit. S. Bernardi cap. xi. No. 52. William, Abbot of St. Theodore, was a contemporary of St. Bernard, and his story represents therefore a living belief of the age, and not merely a miraculous legend.

[2] Nider Formicar. Lib. v. c. x.

and it was effectual as an everyday operation of that authority, irrespective of the character of the minister who wielded it.

How thoroughly these excommonications of animals were assimilated to the regular use of the censures of the church is manifest by the form which they subsequently took. Even as the canons, however constantly violated, forbade the expulsion of a Christian without a formal trial, so, as civilization advanced, it began to be thought that an unfair advantage was taken of the dumb creatures of God by condemning them unheard, and the practice arose of affording them the opportunity of defence before the ecclesiastical courts prior to pronouncing the dreadful sentence against them. Perhaps the best known of these curious proceedings was that by which the distinguished lawyer, Bartholomew Chassanée, in 1510, made the reputation which subsequently elevated him to the post of Premier President of the Parlement of Aix. The country around Autun being intolerably infested with rats, whose numbers resisted all ordinary means of extermination, the inhabitants applied to the bishop to have the vermin regularly excommunicated. The episcopal court nominated Chassanée to appear as counsel for the rats, in consequence of his having shortly before printed a consultation of vast erudition on trials of that kind. He accordingly undertook the defence, and proved that the rats had not been properly summoned to appear, and the trial went over until a formal citation to the defendants was published by the priests of all the parishes in the infested district. He then moved for a longer delay, alleging that the time allowed the rats to put in an appearance was too short, in view of the danger incurred through reason of the cats which barred all access to the court; and his learned argument on the point gained an additional postponement.[1] De Thou, to whom we are indebted for these curious details, does not state the conclusion of the trial, but it is fair to presume that the rats were finally condemned and duly excommunicated, in spite of the

[1] De Thou, Hist. Univ. Lib. VI.

learning and ability of their advocate, for that was the usual result in these cases, and Chassanée in his consultation had admitted its propriety. He argues, after various generalizing reasons, that religion permits us to lay snares for birds and other animals destructive of the fruits of the earth, and that the anathema is the surest and most comprehensive of snares. That to preserve the harvests, incantations and other forbidden proceedings are tolerated by the law, and *a fortiori* it is permissible to use against destructive vermin the excommunication which is authorized and employed by the church itself. In support of this opinion he cites a case in which the sparrows who soiled the church of St. Vincent were excommunicated by the bishop, and another where the rats and caterpillars who swarmed over a wide extent of country were jointly anathematized by the ecclesiastical authorities of Autun, Macon, and Lyons.[1]

Such cases, indeed, were by no means rare. In 1451 the fish of the Lake of Geneva were threatened with destruction by the abounding multitudes of leeches. By order of William of Saluces, Bishop of Lausanne, a regular trial was held; the leeches were ordered, under pain of excommunication, to confine themselves to a certain spot, and they duly obeyed, no longer venturing to wander beyond the limits prescribed. In 1480 the spiritual court of Autun, on complaint of the inhabitants of Mussy and Pernan, excommunicated the caterpillars, and ordered the priests to repeat the anathema from their pulpits until it should produce the desired effect. In 1481 a similar sentence was rendered at Macon against the snails, which was repeated in 1487. Another was delivered in 1488 at Autun against the caterpillars, and the same year at Beaujeu against the snails. At Troyes, in 1516, there were similar proceedings against caterpillars;[2] and about the same time against grasshoppers at Millière in Normandy. The progress

[1] Agnel, Curiosités Judiciaires, pp. 25–6.

[2] The form of adjuration employed on this occasion may be found in Du Cange s. v. *Excommunicatio* (T. III. p. 137, col. i. Ed. 1844).

of enlightenment, however, made itself apparent in 1587 at Valence, where a plague of caterpillars led to a formal trial and sentence of banishment under pain of excommunication. The obstinate insects refusing obedience, the grand vicar of the Bishop of Valence was proceeding to fulminate the threatened anathema, when he was dissuaded by some discreet lawyers and canonists.[1]

In Spain at a somewhat earlier period the theologians took the sensible view that all such proceedings were vain and superstitious, seeing that insects being devoid of reason cannot understand the anathema launched at them, and being the result of natural causes, and having no free will, they are guilty of no sin. Yet the superstition was so ingrained in the people that a class of swindlers derived support from their assumed power to drive away these pests, and were paid every year to come for that purpose. Their proceedings consisted in holding a court wherein one acted as judge, another as prosecutor, and a third as counsel for the defendants. Long pleadings were made, with frequent adjournments and delays, and finally judgment was given that the insects should vacate the district within a specified time under pain of excommunication, *lata sententia*. Ciruelo, a learned inquisitor, writing in 1539, condemns as blasphemous this burlesque upon the holy ceremonies of the church, and calls upon both the ecclesiastical and secular tribunals to punish all concerned, especially as the devil, for the purpose of deceiving pious simplicity, often caused the insects to disappear when thus summoned. Yet in his directions as to what ought to be done to get rid of these pests, he mingles sound agricultural advice with instructions for the use of holy water, masses, processions, and other spiritual remedies, which must have been equally tempting to the Arch Deceiver. He especially recommends devotion to St. Gregory of Ostia, who was sent by the pope in response to an application from the people of Aragon and Navarre, after

[1] Agnel, op. cit. pp. 26–36.

suffering devastation for many years from a plague of locusts. St. Gregory organized processions of flagellants, with prayers, fasts, and almsgiving, and then in full pontificals celebrated mass in various places throughout the infected districts. His sanctity, the papal authority, and the grace of God were too much for the devastators, who fled the country and disappeared.[1]

Cardinal Duperron, who was too vain of his learning to have much belief in anything but himself, was keenly alive to the absurdity of such proceedings, and in the ritual of Evreux in 1606 forbade everything of the kind except under written permission of the bishop. Yet the superstition was too deeply rooted in the popular belief to be easily eradicated, nor was the church prepared to abandon any source of influence over the faithful. Martin of Arles, who about this period published a tract against the superstitions of the day, mingles with sensible observations on the grosser forms of popular credulity a defence of proceedings of this kind, provided they are conducted in accordance with the established formulas of the church. All destructive vermin he conceives to be the direct emissaries or instruments of the devil, and it is the province of the church to exorcise and defeat the devil in all his manifestations.[2] What were the established forms are to be found in a manual of exorcisms published by authority at Antwerp in 1648, which gives the regular ritual provided for the cursing of noxious vermin. After certain prayers offered in the fields to be cleansed of them, the priest recited the 9th chapter of the Apocalypse, the 11th of Luke, and the 49th Psalm, and then proceeded, "I exorcise and adjure you, O pestilent

[1] Ciruelo, Reprovacion de Supersticiones, P. III. c. x., Salamanca, 1539.—Del Rio, writing in the early years of the seventeenth century, quotes Ciruelo at much length and with full approval, as though his remarks were still applicable.—Magica, Lib. VI. Anaceph. Monit. 11.

[2] D. Martini de Arles Tract. de Superstit. Ed. Francof. ad. M. 1581, pp. 392, sqq. The first edition of this work I believe was published in Rome in 1560.

worms, by God the omnipotent Father, and our Lord Jesus Christ His Son, and by the Holy Ghost proceeding from both, that you at once abandon these fields, meadows, pastures, gardens, vineyards, and waters, if the providence of God permit you still to live, and that you no longer stay here but betake yourselves to such places that you may do no harm to the servants of God. If you are here through the craft of the devil, I order you in the name of Divine Majesty, of all the Heavenly Host, and of the Church Militant, to decrease and disappear unless you can add to the glory of God the comfort of man. Which may He deign to grant who cometh to judge the quick and the dead and the world by fire. Amen!"[1]

In this there is no mention of excommunication, and if the latter was employed, it must have been a subsequent proceeding on the vermin proving obdurate to the exorcism. The custom was not obsolete, however, for, fifty years later, the Canadian colonists used occasionally to seek protection from the ravages of immense flocks of wild pigeons by getting the Bishop of Quebec to excommunicate them; and in the early part of the eighteenth century, at the request of the village of Pont-du-Château in Auvergne, a regular process of anathema was resorted to by the ecclesiastical courts against an invasion of caterpillars. In 1713 the good brethren of the monastery of St. Anthony of Marañon, in Brazil, finding that their provisions were destroyed and the foundations of their building undermined by an immense colony of ants, went through the forms of a regular trial, ending in a sentence of banishment under pain of excommunication; and on this being formally read at the entrance of the ant-holes, the obedient insects at

[1] R. D. Max. ab Eynatten Manuale Exorcismorum, Antverpiæ, 1649, pp. 299–305. I find the same form of exorcism, with a more elaborate litany, in a manual published in Italy in 1815 (Sannig, Collectio sive Apparatus Absolutionum, Benedictionum, Conjurationum, Exorcismorum, Rituum, etc. Bassani, 1815, p. 217), and it may possibly be used there to this day. The same collection has a form of exorcism for powder and ball, to insure that when used against enemies of the Catholic faith evil spirits may not render them harmless (Ibid. p. 180).

once took up the line of march in heavy columns and proceeded to the spot designated for their habitation. About the same time a similar occurrence is recorded as taking place in Peru, where the ravages of a multitude of ants threatened to destroy a library.[1]

These eccentric abuses of the power of excommunication have their importance as showing the impression produced on the human mind by the assiduous teachings of the church. Not only was the anathema thus believed to be endowed with almost omnipotent force, but the disposition to resort to it on every occasion when the ordinary processes of law were at fault was encouraged until it became a universal remedy or panacea. Diego Gelmirez, Archbishop of Compostella, in the early part of the twelfth century, could think of no better mode of preserving the manuscript history of his pontificate than by fulminating an excommunication, which consigned to eternal damnation with Dathan and Abiram, any sacrilegious wretch who might steal or mutilate the copy which he deposited in the archives of his cathedral;[2] and Arnaud, Abbot of St. Peter of Sens, on his death-bed in 1123, formally excommunicated any of his successors who should sell, or lend, or lose, any of the twenty volumes which constituted the abbey library.[3] When Clement III. desired to encourage the rising University of Bologna, he issued a bull anathematizing *ipso facto* any one who should offer higher rent for lodgings occupied by any teacher or student; and this became the common law of the church everywhere, according to Alfonso the Wise.[4] After the invention of printing had given a pecuniary value to literary labor, and before the introduction of the legal protection of copyright, pirated editions were prevented by accompanying the grant of exclusive publication with an ana-

[1] Agnel, op. cit. pp. 40–46.

[2] Historiæ Compostellan. Procem. et Comminatio.

[3] Chron. S. Petri Vivi (D'Achery II. 484).

[4] Las Siete Partidas, P. I. Tit. ix. l. 2. Cf. Thesauri de Pœnis Eccles., Ferrariæ, 1761, p. 83.

thema directed against all who should infringe upon the rights of the author. Even popes did not disdain thus to fulminate the papal excommunication, and publishers were able to defiantly proclaim the eternal punishment awaiting those who should interfere with their privileges.[1] So minute, indeed, were the applications of the anathema that learned doctors gravely disputed whether a man who stole a single bunch of grapes from a vineyard could be excommunicated, if others followed his example until the vines were stripped; or whether the same penalty could be inflicted for the theft of a tailor's needle, when the loss of it might throw him out of work.[2] Yet any doubts as to the propriety of thus employing the anathema for trifles were usually resolved in the affirmative. In a sermon preached at St. Andrew's in 1528, William Arith, a Dominican friar, after premising that cursing "was the most fearefull thing upon the face of the earth," proceeded to state, "but now the avarice of preests and ignorance of their office hath caused it to be altogether vilipended; for the preest, whose duetie and office is to pray for the people, standeth up on Soonday and crieth 'One hath tint a spurtell; there is a flail stollen beyond the barne; the good wife on the other side of the gate hath lost a horne spoone; God's curse and myne I give to them that knoweth of this geere and restoreth it not!'"[3]

This idea of supplementing the defects of human law by the employment of excommunication was a very fruitful one, and gave immense extension to the jurisdiction of the church, not only increasing incalculably the power of the ecclesiastical body, but providing an endless succession of fees for its offi-

[1] See the Rituum Ecclesiasticorum Libri III. Venet. 1516.—Reprinted in Hoffmann's Nova Script. ac Monument. Collect. T. II. (Lipsiæ, 1733). A threat of major excommunication is likewise appended to an elaborate account of an auto-de-fe published in Cordova in 1625, with the authority of the Inquisition (Arch Seld. 130, Bib. Bodl.).

[2] Avila de Censuris Eccles. P. II. cap. v. Disp. ii. Dub. 3 Conclus. 3.

[3] Calderwood's Historie of the Kirk of Scotland, Vol. I. pp. 83–4.

cials. Even as late as the eighteenth century, any one suffering from a theft could procure episcopal letters of excommunication against the offenders on swearing that they were unknown, and casuists excused this traffic in the body and blood of Christ by arguing that this process was not intended for the temporal good of the loser, but for the soul's health of the criminal.[1] In fact, before an irreligious generation superseded it with the carnal device of a detective police, it was regarded as the most efficient agency for the recovery of stolen property. There is on record a bull of Paul III., issued in 1542, excommunicating some graceless rascals who had made way with a portion of the muniments of Montignac in Bigorre. In the archives of Pau there exist various "monitoires," dating about the middle of the seventeenth century, addressed by the episcopal official to the curés of parishes, for the purpose of obtaining the restitution of certain papers belonging to the commune. These monitoires were read from the pulpits, and after three repetitions, any one neglecting to reveal any facts within his knowledge bearing on the subject was *ipso facto* excommunicated. So, also, the records of Vic-en-Bigorre contain a resolution adopted by the authorities of that town, in 1665, to obtain a papal excommunication against certain parties who would not restore some documents belonging to the commune.[2] When, in 1582, the constitutions of the see of Valencia were collected, a hundred copies were printed and one was given to each of the canons. To preserve the supply, the simple expedient was adopted of excommunicating the heirs of any canon who should not return to the church his copy within three day of being summoned so to do.[3]

In 1568 the Inquistors of Valencia were forbidden to employ the censures of the church in cases where the familiars and other inferior officials of the Holy Office had suffered theft or

[1] Avila de Censuris Eccles. P. II. cap. v. Disp. ii. Dub. 1 Conclus. 2, 3.

[2] Lagrèze, Hist. du Droit dans les Pyrénées, pp. 281, 211.

[3] Epist. Constit. Eccles. Valent. (Aguirre Concil. Hispan. V. 530).

damage[1]—leaving it to be inferred that they were at liberty to use them when the property of the superior officers was concerned. How completely the anathema had become a matter of traffic is shown by a canon of the council of Seville in 1520 prohibiting the episcopal officials from issuing letters of excommunication in blank; and the extent to which the abuse was carried is manifested by another provision declaring that such letters shall not be granted in trivial matters, the minimum limit being fixed at 100 maravedis.[2] This limit was raised, with the fall in the value of money, by the Synod of Valencia, in 1566, to three livres in cases where an article was certainly known to have been lost or stolen, and to fifteen livres where the loss or theft was only conjectural, the value to be sworn to by the party applying for the letters.[3]

The extension of church censures to matters so manifestly beyond their legitimate sphere, however, could not but interfere with the respect due to them, even in Spain, and casuists found little difficulty in eluding their consequences. In 1650, Fray Miguel de Santa Maria, a learned theologian, was called upon for his opinion whether a depositary could be forced by a proclamation of *ipso facto* excommunication to reveal a deposit which he held for the benefit of his wife, the only daughter and legal heiress of the depositor, who was the undoubted owner of the property in question. The bare statement of the case shows the foul uses to which excommunication was habitually put, and the good friar, writing from his convent, had no hesitation in making the unqualified assertion that a general proclamation of excommunication was only binding on those who were in mortal sin, that it was always to be understood as not aiding an injustice, and that the depositary might, with a good conscience, deny under oath the holding of the deposit.[4]

[1] Concordia, año de 1568 (Bib. Bodl. Arch Seld. 130).

[2] Concil. Hispalens. ann. 1512 can. lix. (Aguirre V. 379).

[3] Synod. Valent. ann. 1566 Act. II. cap. xxi. (Aguirre V. 471).

[4] MS. Bibl. Bodleian. Arch Seld. I. 1.

It was to put a limit to these abuses that the council of Toledo in 1582 decreed that only bishops personally, or their vicars general in their absence, should have power to issue letters of excommunication.[1] Yet there can be little doubt that in many cases this process was very effective. William Arith, in the sermon alluded to above, told a story of his being asked by some gossips "What servaunt will serve a man best upon least expense?" and on his guessing "the good angel," he was told he was wrong, for "Know ye not how the bishops and their officialls serve us husbandmen? Will they not give us a letter of cursing for a placke to indure for a whole yeere, to curse all that look over our dykes? That keepeth our corne better nor the sleeping boy, who will have three shillings in fee, a shirt, and a pair of shoes in the yeere."[2]

The most instructive example, however, of this extension of the anathema is perhaps to be found in its application to the collection of debts, which was so widely used and so long continued that we may fairly conclude that it proved very effectual. The rise of this custom would seem to be attributable to the efforts of the papacy to protect the money-lenders of Italy in advancing funds to the multitudes attracted to Rome by the innumerable interests concentrated around the high court of Christendom. A sojourn in the Holy City by any one who had a favor to gain, a preferment to be confirmed, or a cause to be won, was apt to prove much more costly than the simple Englishman or German had anticipated, and benevolent bankers were not scarce who would cheerfully supply the necessities of any prelate in good credit, to the resultant profit of the papal officials. In fact, it was popularly believed throughout Europe that these bankers were really only agents of the popes, whose money they thus were wont to put out at usurious interest,[3] and thus it was natural that the holy father

[1] Concil. Toletan. Provin. an. 1582 Act. III. decret. iv. (Aguirre VI. 7).

[2] Calderwood, loc. cit.

[3] See the treatise, De Recuperatione Terræ Sanctæ cap. xvii. (Bongars Gesta Dei per Francos II. 325). The author was supervisor of

should exercise a paternal watchfulness over the repayment of the advances. The stranger, however, would sometimes depart without a settlement, and when safely returned to his native fastnesses would prove unduly oblivious of the florins and byzants accumulated against him on the books of the obliging Italian. Collections by the ordinary forms of law were almost hopeless, but it was not difficult to obtain the friendly interest of the head of the church, whose arm was long, and who could reach the debtor, however distant and however high-placed. The earliest instance of this with which I have met occurred in 1180, when Lucius III. writes to the Archbishop of Canterbury, whose chancellor had borrowed largely of some Bolognese on the security of an Italian friend. The money was not forthcoming, the interest was daily increasing the debt, and the security was becoming uncomfortable, when the pope intervened and informed the English primate that if the transaction was not disputed, the debtor must be forced to settle by means of ecclesiastical censures.[1] So in 1207 we find Theodoric, Bishop of Utrecht, making default in the payment of 1250 marks borrowed of certain citizens of Rome and Siena, and setting at naught the excommunication launched at him by the Bishop of Præneste as papal legate. At length Innocent III. wrote to Hugh, Bishop of Liége, that the sum must be paid within the year, in three equal instalments, without interest, failing which, Hugh is formally to anathematize Theodoric with bell, book, and candle, in all the churches of the province of Cologne, and the clergy of Utrecht are no longer to render obedience to him; while further contumacy is to be punished with final deposition.[2] It is evident that no ecclesiastical rank, however exalted, exempted the debtor

ecclesiastical causes in Aquitaine, and thus probably had ample opportunity to learn the inner workings of the Roman curia, and as his book is addressed to Edward I. of England, his royal master, it may be assumed to have ample endorsement. According to Michaud (Bibl. des Croisades I. 198), it was written about the year 1200.

[1] Cap. 3 X. Lib. III. Tit. 22.

[2] Innocent. PP. III. Regest. Lib. VI. Epist. 215.

from this liability, as Ulric, Archbishop of Salzburg, found when he was excommunicated in 1262 by Urban IV. for not fulfilling engagements made with the pontiff, amounting to 4000 marks.[1]

In an age when the distinctions of *meum* and *tuum* were too often subordinated to force and fraud, there was a charming promptness and simplicity about this mode of procedure which recommended it forcibly to the proverbially defenceless class of creditors. They, therefore, eagerly supported the claims of the church to jurisdiction in such cases, which was easily effected by making debtors swear to the punctual discharge of their obligations. Bankruptcy thus became perjury, which was clearly a case of conscience, subject to the courts Christian; and gradually the latter acquired a large and profitable business in collecting desperate debts. Already, by the middle of the thirteenth century, St. Louis felt himself obliged to restrain the rigor of these proceedings by enacting that when in such cases the debtor remained under excommunication for the legal period of a year and a day, the secular court should seize only his property and not his person, leaving him, moreover, enough to sustain life, and that on settlement he should pay a fine of nine livres—three to the temporal and six to the ecclesiastical court.[2] And in 1245, when he was preparing for his crusade and granted to all debtors who would assume the cross three years' extension for the payment of their obligations, he ordered that those who were under excommunication should be absolved by their creditors without prejudice to any securities which the latter might hold.[3] About the same time the council of Ruffec, on the other hand, sharply reproved the tenderness of those priests who absolved the dying debtor, without first taking care to see that his heirs had arranged to satisfy the creditors, and in all such cases the misplaced sensibility of the ecclesiastic was punished by making him responsible for all

[1] Dalham Concil. Salisburg, p. 98.
[2] Établissements, Liv. I. chap. 123.
[3] Martene Collect. Ampliss. I. 1295.

indebtedness, unless, indeed, the estate of the decedent should prove to be utterly insolvent.[1] It was probably for cases of this kind that a Synod of Anjou in 1265 prescribed that when an excommunicate on his death-bed desired absolution he should first be required to take an oath to fulfil the commands of the church and should pledge his property and heirs to the same effect. If he had no property his simple oath sufficed, and if he were speechless the obligation was to be given by his heirs.[2] In Germany the tendency of the priesthood seems to have been towards extreme severity, for the council of Wurzburg, in 1287, is obliged to forbid the excommunication of the widows and mothers of dead insolvents. When they inherited property and refused to pay the debts of the deceased, this was allowable, but when they received nothing the council reasonably enough thought it a hardship that they should share in the damnation of the defunct.[3]

In an age when a powerful debtor could be reached in no other way there was much to be said in favor of this efficient intervention of the church, and yet the employment of her solemn rites for so purely worldly a purpose could not fail to be shocking to the spiritually inclined, and the natural result of such an abuse of ecclesiastical censures was to dull the sensibilities of the people to their awful nature. In 1371 Charles le Sage issued an edict in which he recounts that multitudes of wealthy debtors remained unconcernedly under excommunication for long periods of years, and the church was therefore obliged to recur to the vulgar expedient of requesting the state to seize the possessions of such hardened delinquents—a request with which the king hastened to comply.[4] In 1302 Boniface VIII. had already called attention to a flagrant abuse by which, through avarice rather than Christian charity, whole communities and provinces were laid under interdict, the living

[1] Concil. Roffiacens. ann. 1250 can. 8 (Harduin. VII. 503).
[2] Synod. Andegavens. ann. 1265 cap. vi. (D'Achery I. 728).
[3] Concil. Herbipolens. ann. 1287 can. 29 (Harduin. VII. p. 1140).
[4] Isambert, V. 353.

deprived of the sacrament and the dead refused sepulture, on disputes arising merely from pecuniary questions, and he forbade such oppressive use of the power of excommunication for the future.[1] This was not held, however, to apply to individual cases, and in 1341 we find Benedict XII. collecting in this manner a debt of 16,200 gold florins due to him by Humbert II., the last Dauphin of Vienne.[2] Even the restriction as imposed by Boniface seems to have received little respect, for in 1326 the council of Marsiac was obliged again to forbid the infliction of interdicts on communities for debt, without the especial license of the Holy See,[3] and in 1416 the council of Constance included this among the numerous abuses which it proposed to check. Prelates were in the habit of laying whole communities under interdict to enforce the payment of trifling sums due by individuals, and pretended, as usual, that it was not on account of the money but of contumacy. The fathers of Constance suggested that this should only be allowed when the debtor had remained under excommunication for six months without amending his ways and the people of the district encouraged him by not segregating him.[4] As the efforts of the council to adopt any system of reform were successfully negatived, the abuse continued to flourish until the sixteenth century, as we shall see hereafter. The council of Avignon in 1337 sought to check another abuse through which frauds were frequently practised in such cases, by ordering creditors, under pain of excommunication, to surrender, on receiving payment, all obligations and evidences of the debt discharged, and by prescribing a limitation of ten years, after which all bonds and promises to pay became invalid.[5] In 1456, however, a complaint of the Estates of Languedoc shows that the royal officials

[1] Can. 1 in Septimo Lib. II. Tit. viii.

[2] Du Cange s. v. *Excom. ob Debita.*

[3] Concil. Marciacens. ann. 1326 can. 55 (Harduin. VII. 1530).

[4] Reformator. Constant. Decretal. Lib. v. Tit. viii. cap. 4 (Von der Hardt T. I. P. XII. p. 751).

[5] Concil. Avenionens. ann. 1337 can. 27, 28 (Harduin. VII. pp. 1627–8).

were beginning to issue injunctions prohibiting excommunication in cases of debt, and the remonstrance made to Charles VII. received a very unsatisfactory response[1]—though for a century later the church continued with more or less activity her functions as a collector.

When a debtor died under the ban of the church we have seen that the German practice to enforce a settlement was the simple expedient of excommunicating his heirs. This does not seem to have generally obtained, and elsewhere the revival of the ancient Roman custom of refusing sepulture to his corpse was deemed sufficiently effectual—a proceeding which Theodoric the Ostrogoth had prohibited under pain of five years' exile and forfeiture of one third of the offending creditor's property.[2] Theodoric was an Arian, however, and his notions of humanity were no rule for the orthodox, while the indecency of the act seemed justified by the general principle which denied sepulture to the dead excommunicate, and it was found too effectual to be lightly foregone. Thus, in 1273, a knight named Adam Fourre died under excommunication for a debt due to the chapter of Meaux, and, before he could be buried in Paris, the episcopal official issued letters patent declaring that another knight, Guillaume de Villiers, had given security for the debt, and that the dead man had in consequence been properly absolved by a priest—thus showing the formula by which the salvation of the defunct depended upon the devotion of his friend in satisfying the demands of his creditors.[3] A notable instance of the practical efficiency of this custom was afforded in 1356, when Pierre I., Duke of Bourbon, fell valiantly fighting at his sovereign's feet, in the disastrous day of Poitiers. He was the great-grandson of St. Louis, the brother-in-law of Philip of Valois, and the father-in-law of Charles V. of France, and of Pedro the Cruel of Castile, yet his creditors were numerous, and, finding no means of enforcing payment from a

[1] Isambert, IX. 298, 311.

[2] Edict. Theodoric. cap. 75.

[3] D'Achery Spicileg. III. 677.

man elevated above the reach of ordinary law, they had obtained a sentence of excommunication against him. Neither his royal blood, his lofty station, nor his distinguished services availed aught against the decrees of the church. His corpse was carried from the field of battle to the church of the Jacobins at Poitiers, where it lay unburied until his son, Louis II., a youth of 18, pledged to Innocent VI. all his estates to satisfy the creditors of his father, when the excommunication was raised, and the remains at last were honored with a splendid funeral[1]—a striking illustration of the usefulness of the church in establishing the common humanity of all men in an age of class distinctions. In 1365 the council of Apt censured the practice of continuing to proclaim the excommunication of deceased insolvent debtors, and ordered the creditors to have recourse against the heirs, which was probably directed against the practice of refusing burial in such cases,[2] and in 1368 the synod of Chartres peremptorily ordered all priests under pain of suspension to prohibit the retention of bodies above ground on account of debts,[3] yet the custom long continued. At the very close of the fifteenth century we find the case of Barthélemy de Saint-Aunis, who died under excommunication for debt by the ecclesiastical court of Tarbes, and whose widow, Marie de Castelnau, by a document executed in 1499, pledged herself to pay his debts, amounting to $52\frac{1}{2}$ crowns, at the rate of four crowns per annum, in order to obtain Christian burial for him.[4] As time passed away, the rigor of refusing inhumation was modified into the lighter penalty of burial in unconsecrated ground, and in 1542 the court of the Seneschal of Bigorre entertained an appeal from Dominique de la Case, a priest of Tarbes, who had been unable to obtain Christian sepulture for his cousin Guillaume Beyric, then five years dead, and lying

[1] Desormeaux, Hist. de la Maison de Bourbon, I. 285–6.

[2] Concil. Aptens. ann. 1365 can. 23 (Martene Thesaur. IV. 338).

[3] Synod. Carnotens. ann. 1368 c. 24 (Martene Ampl. Coll. VII. 1362).

[4] Lagrèze, Hist. du Droit dans les Pyrénées, p. 209.

in unhallowed ground—his plea being that the non-payment of Guillaume's debts had arisen from his utter poverty.[1]

This shows that the church took no count of the debtor's inability to pay when condemning him to eternal torment, and also that such inability was thought to be a fair justification to bring before a secular court. This question was one which received different solutions at different times. In the earliest extant Coutumier of Britanny, dating probably about the commencement of the fifteenth century, the subject is discussed at some length. The right of the church to act in such cases is allowed, in opposition to the opinion of those who held that secular courts alone had cognizance of such matters, and its jurisdiction is admitted to be a valuable resource against the partiality, negligence, or avarice of the secular tribunals; but the assertion is made that no one ought to be excommunicated if he has property, real or personal, which can be taken in execution by the lay officers. At the same time, any priest refusing absolution to a dying debtor, whose poverty is the excuse for the non-payment of his debts, should be deprived of his benefice.[2] In the early part of the sixteenth century, Anne of Britanny withdrew actions for debt from ecclesiastical jurisdiction;[3] and in 1539, Francis I., who endeavored to limit at all points the power of the spiritual courts, expressly forbade his clergy from citing laymen before them in secular matters, and prohibited the episcopal judges from issuing any summons in such cases.[4] Yet in spite of all this, the revision of the Coutumier in 1539 contains the same provision, permitting excommunication only in cases where the debtor has no property that can be seized under judgment, and the right to do so dis-

[1] Lagrèze, op. cit. pp. 209–11.

[2] Très Ancien Cout. de Bretagne, cap. 335 (Bourdot de Richebourg. IV. 280).

[3] D'Argentré, Comment. in Consuet. Britan. App. p. 2.

[4] Edit. de Villers-Cotterets, ann. 1539, Art. 1, 2 (Isambert, XII. 601). —Cf. Edit. de Yz sur-Tille (Oct. 1535), chap. XII. art. 26, 27 (Neron, I. 131).

appears only in the revision of 1580.[1] Bertrand d'Argentré, writing in the interval, intimates that the limitation was not strictly observed, and that ecclesiastical censures often served a good purpose in aiding the secular courts to deal with tricky and fraudulent debtors.[2]

As the administration of law became systematized, and petty local despots were less able to set it at defiance, the necessity for these proceedings decreased, and they gradually disappeared; but there can be no doubt that in preceding ages they were in many instances the only mode in which substantial justice could be obtained of the powerful by the weak. At the same time there can be as little doubt that they frequently opened the door to frightful abuses. The power thus conferred on the unscrupulous is well illustrated by Balthazar Cossa, better known as John XXIII. Before his elevation to the papacy, while yet a cardinal and papal legate at Bologna, in the opening years of the fifteenth century, he enriched himself by lending money at the moderate usury of twenty-four per cent. for four months, obliging the borrower to give security, and to pledge himself under the ecclesiastical penalties and censures. If the loan were not promptly repaid at maturity, he immediately prosecuted the unlucky debtor and his sureties before the auditor of the papal chamber, and had them thrown into prison.[3] Another abuse of the system is indicated by a protest in the Ancien Coutume de France, to the effect that the rule convicting of heresy any one remaining for a year under excommunication does not apply to those involved in the censure for debt.[4] It is fair to assume, indeed, that the Diet of Nürnberg in 1522 was justified in including among the grievances laid before Adrian VI. this mode of collecting debts, and that its statement of the wrong and ruin frequently caused by this incongruous

[1] Ancien. Cout. de Bretagne, Tit. 1. art. 6.—Cout. de Bretagne, Tit. 1. art. 6.

[2] B. d'Argentré, Comment. in Consuet. Britan. p. 17.

[3] Theod. a Niem de Vit. Joann. XXIII.

[4] Du Cange s. v. *Excom. ob Debita.*

mingling of spiritual and temporal affairs was not exaggerated:[1] especially when we find Clement VII., in 1529, obliged to promulgate afresh the decretal of Boniface VIII., prohibiting the interdict of cities and provinces on account of debts,[2] and a learned advocate in Spain, as late as 1670, claiming for the legal profession the special exemption of not being liable to excommunication for debt.[3]

From this rapid sketch of some of the practical applications of the power of excommunication, and of the penalties consequent upon separation from the sacraments of the church, it is easy to imagine the authority thence derived to the ecclesiastical body, and the opportunities for good or evil which it thus acquired. In the social order of Christendom, no man was so high as to be beyond its reach, no man so obscure as to escape its observation. Even the misbelieving Jew could not elude the anathema, for when he disobeyed the commands of the church he was indirectly excommunicated by excommunicating the secular authorities until they compelled his obedience.[4] The network of its organization covered every land, and where it could not effect its purposes by working on the consciences of men, the whole power of the state was at its bidding to compel obedience and to crush resistance. In Languedoc it could marshal irresistible armies to exterminate heresy; in Sweden it could deliver to the executioner the miserable peasant who refused to pay his tithe; and no matter what was the nature of the offence, as soon as the church intervened, all crimes became equal when merged in the one overwhelming sin of disobedience.[5]

[1] Gravamina Nationis German cap. 41 (Le Plat, Monument. Concil. Trident. T. II. pp. 188–9).

[2] Can. 3 in Septimo Lib. II. Tit. viii.

[3] Juan Marquez de Cuenca, Memorial Juridico, fol. 37 (Bib. Bodl. Arch Seld. I. 23).

[4] Synod. Bambergens. ann. 1491 Tit. xliv.—"Ipsi autem Judæi per nos indirecte per subtractionem communionis fidelium excommunicationis sententia compellantur." (Hartzheim, V. 623.)

[5] An exception to this must be noted in the case of Iceland, whose

In thus building up an organization able to confront the savage forces of feudalism, the church unquestionably accomplished vast good. Yet the benefits thus conferred on civilization were accompanied by inseparable evils. More occupied with acquiring power than with training those intrusted with its exercise, the church found its ministers too often utterly unworthy of the tremendous responsibilities thrust upon them. The authority, indeed, was too vast and too unchecked to be safely confided to fallible human nature, and there was more piety than reason in the anticipation that God would strengthen the hands to which so large a portion of His attributes were assigned.

Theoretically, indeed, the system was one of strict accountability, but practically it amounted to irresponsibility. With the growth of the papal power all the active forces of the church came gradually to be centred in the successor of St. Peter. He was supreme, and his subordinates everywhere exercised only a delegated authority, to be set aside or overruled at his pleasure.[1] While thus there lay an appeal to the pope from the sentence of any ecclesiastical court, yet this illusory reference to distant Rome was, in most cases, practically to render the local judgment final, except to wealthy pleaders, at an age when communication was so tedious and difficult, and perpetual private wars and robber nobles rendered every pathway insecure. Its effect, moreover, was to give

church differed so greatly from the rest of Christendom. In the code of ecclesiastical law drawn up by Bishops Thorlak and Ketill in 1122, which remained in force until 1275, there is no mention of excommunication save a somewhat doubtful allusion to the interdiction of sepulture. The penalties provided for all offences—infraction of fasts, disregard of Sunday and saints' days, non-payment of tithes, and even sorcery and paganism—are all purely temporal, being simply fines or banishment, and all charges were tried before the secular courts by the regular form of a jury of the vicinage.—Kristinrettr Thorlaks oc Ketils, cap. XV. XVI. XVII. XVIII. XXX. XXXV. XXXVI. XXXVII. XL. XLI. XLII. XLIII. XLIX.

[1] Johann. PP. VIII. Epist. 263.—Clement. PP. III. Epist. 33.—Gregor. PP. VIII. Epist. 20.

enormous advantages to those who could overcome these obstacles, and thus to destroy subordination to the local tribunals. Whether well or ill deserved, the Roman curia had the reputation of doing anything and everything for money, and this reputation, while most profitable to its officials, was utterly subversive of order and morality throughout Christendom. At the close of the twelfth century, shortly after Innocent III. had ascended the papal throne, Conrad Abbot of Ursperg thus describes the condition of the German church in its relations with Rome.—"There scarce remained a bishopric or a prelacy or even a parish church that was not involved in law, and therefore forced to apply to Rome, but not empty handed. Rejoice, O mother Rome, for the fountains of the riches of the world are opened that rivers and heaps of money may pour into thee! Make merry over the iniquity of the sons of men, for thou gettest thy price for all these evils. Be glad over thy ally, discord, which has broken loose from hell that thou mayest wax rich. Thou hast what thou hast always thirsted for; raise the song of joy, for thou hast conquered the world, not by thy holiness, but by the wickedness of man. Men are drawn to thee, not by their devotion or their conscience, but by the increase of their iniquity and the sale for money of thy decision of their quarrels."[1] Two hundred years later the complaints of Nicholas de Clamanges show us that these abuses were still as rife as ever. Scarce a benefice could be had, however strong the claim on it, without litigation in Rome, where gold was all-powerful and the poor suitor had no chance. Judgment was openly sold, and plots and tricks were ever at the service of the wealthy suitor to divert the course of justice. Nay, the innumerable regulations promulgated by every pontiff had no other object than to give free scope to venality and plunder.[2] The Council of Constance proposed at one time to limit the vast number of reserved cases in which the Roman

[1] Conrad. Ursperg. Chron. ann. 1199.

[2] Nic. de Claming. de Ruina Ecclesiæ cap. x. xi.

curia had assigned to itself original jurisdiction, reducing the power of the local courts almost to a nullity and conferring on privileged persons and classes the right to carry their suits at once to Rome, but the project failed, as did all the other projects of reform in that body, under the skilful manipulation of those who were interested in the perpetuation of abuses.[1]

It can readily be imagined therefore that the rush of business of all kinds to the papal court was so enormous and so various that its equitable dispatch became impossible amid the obstacles to obtaining proper evidence concerning minute details occurring in every corner of Europe. Setting aside the notorious venality of the Roman curia, the organization thus was one which no human force, in the existing condition of European society, could carry on without the commission of perpetual injustice. The endeavor to create a theocracy, and to concentrate its power in the visible head of the church, was a brilliant scheme, but one which only angels could execute. Too much was attempted, and even the best-intentioned popes often were unwittingly the cause of aggravating the evils which they sought to mitigate. Omnipotence can only be safely directed by omniscience, and the papacy, in grasping at the former, unfortunately was unable to command the latter.

Thus the supreme jurisdiction, original and appellate, of Rome, only added another to the numerous elements of wrong and extortion wherewith the church afflicted the faithful. Papal letters were all-powerful everywhere; they were readily obtainable, and in a system so liable to abuse they proved a perpetual source of confusion and injustice. As early as the commencement of the twelfth century we find the pope thus granting the power to bind and to loose to a simple chaplain who was about to accompany Stephen Count of Ossone in the first crusade,[2] and the prerogatives thus liberally bestowed were constantly used for selfish and evil purposes. The prelates of

[1] Reformator. Decretal. in Concil. Constant. Lib. I. cap. 1 (Von der Hardt T. I. P. xii. p. 670).

[2] Chron. S. Petri Vivi (D'Achery Spicileg. II. 484).

Southern France, assembled in council at Nougaro in 1290, and at Avignon in 1326, and in 1337, complain bitterly of the evils thence arising. Letters were constantly procured from the pope or his legates under false pretences; they were transferred from hand to hand, and were used for extortion or revenge by enabling the holder to cite his adversary before distant courts, under pain of excommunication, to trump up fictitious cases, and to weary him out with perpetual annoyances and endless expenses.[1] The remonstrances of these councils of course, only deal in generalities, but from an epistle of Innocent III., written more than a century earlier, we obtain a glimpse into the nature of the wrongs thus perpetrated. That pontiff complains of the uses to which certain letters of his had been put, and he endeavors to recall them. The holder of one of them, failing in his efforts to overcome the virtue of a young married woman, used the papal authority to cite her and her friends before an ecclesiastical court, under pretext of obtaining restitution of certain presents which he claimed to have made her. Thus, in the name of the pope, he procured her excommunication, and that of several others, including a female relative who had refused to act as procuress for him. Several of these unfortunates had died while under the ban and had not been buried, while the young wife herself had only been able to obtain absolution on her death-bed by paying a heavy bribe to the ecclesiastical judge. It requires no effort of the imagination to conceive the amount of human misery revealed in this short and simple story. In another case a cobbler was cited and excommunicated, by virtue of the same letter, in a dispute arising about a little thread, valued at less than four deniers. The holder of a papal letter endeavoring to force an entrance into a certain house was prevented by one of the servants. Soon after the domestic was about to be married, when the other interposed, declared him excommuni-

[1] Concil. Nugarolicns. can. 3.—Concil. Avenion. ann. 1326 can. 49.—Ejusd. ann. 1337 can. 59 (Harduin. VII. pp. 1161, 1511–12, 1633). Cf. Synod. Andegavens. ann. 1272 cap. iii. (D'Achery I. 731).

cate, and consequently unable to marry, and in virtue of the powers conferred by the letter, absolved him after extorting ten sols. The same individual caused two hundred men to be cited on fraudulent grounds by an arch-priest, and then had the arch-priest summoned before the episcopal court because he had not shown due diligence in executing the papal mandate; finally forcing him to buy himself off with a heavy fine. With a similar threat of excommunication he extorted fifteen sols from a shoemaker who, he asserted, had made his shoes too small; and another sum from the owner of a horse which he had hired, and which by stumbling in a ford had wet his cloak. Another man he prosecuted for a handful of vegetables, and obtained ten sols from him. In another case he harassed with repeated citations a young man who had caused him the expenditure of a single denier by not keeping an engagement to visit with him a house of prostitution. Innocent adds that some of the ecclesiastical judges were understood to share the booty of these nefarious transactions; that they purposely cited persons to appear in places dangerous to reach, a failure to attend being, by canon law, punishable with excommunication; and that they freely signed and sealed letters to their friends and accomplices, empowering them to inflict excommunication and grant absolution[1]—in this, apparently, only following the example set them by the pontiff himself. If such abuses could flourish under the lofty ambition and ceaseless vigilance of a man like Innocent, it is easy to imagine the condition of affairs under popes who were either negligent or corrupt, when Europe was covered with harpies armed with irresistible and irresponsible powers, tormenting the existence and sucking the life-blood of whom they pleased. Nicholas de Claminges describes the papal collectors who traversed Europe to exact the payments levied upon the churches by Rome as men selected for their hardness and arrogance, who, armed with the unlimited power of excommunication and in-

[1] Innocent. PP. III. Regest. Lib. x. Epist. 79.

terdiction, carried ruin and desolation into whole provinces. To meet their insatiable demands, churches were obliged to sell their sacred vessels and their relics, abbots and prelates whose poverty rendered them unable to satisfy these harpies, when dying were denied the right of sepulture and were thrust into unconsecrated ground; priests were forced to leave their cures and gain a miserable life by beggary or by serving laymen in profane labors, and few churches remained that were not reduced to pauperism.[1]

In the latter half of the twelfth century, Peter Cantor declares that excommunication was used generally as a means of extortion. The inferior clergy were sworn by their prelates not to arbitrate between parties whose quarrels might be reconciled, but to send all cases which they possibly could to the ecclesiastical courts. Any delay in obeying a summons was promptly visited with excommunication, and all excommunicates before reconciliation were obliged to take an oath of submission to whatever commands might be laid on them, so that as soon as they were absolved they found themselves heavily fined for the personal benefit of the prelate.[2] This system of pecuniary mulcts as a condition of absolution was preserved until after the Reformation.[3] It is easy thus to appreciate the truth of the objurgations of St. Hildegarda, who flourished a little before the time of Peter Cantor. "Because they have the power of binding and loosing, they ravage us like the most ferocious beasts. The weight of their wickedness falls on us, and through them the whole church is withered, for they claim that which is not just, they destroy the law, like wolves they devour the lambs. Voracious in gluttony, they perpetrate

[1] Nic. de Claming. de Ruina Ecclesiæ cap. ix.

[2] Pet. Cantor. Verb. Abbreviat. cap. xxiv. No declamation of the Reformers against the scandals of the church can well be more severe than this treatise of Peter Cantor, one of the most eminent churchmen of his age, who twice refused the episcopate, and who died in 1198 in the odor of sanctity.

[3] Jacob. Simancæ de Cathol. Instit. Tit. xxvii. No. 5 (Romæ, 1575).

unnumbered adulteries, and on account of their sins they judge us without mercy."[1]

John Gerson, who was second in reputation to no ecclesiastic of the fifteenth century, states that Urban V. was in the habit of remarking that the one thing for which he chiefly congratulated himself in obtaining the papacy was, that he no longer was in danger of excommunication; to which Gerson adds, reasonably enough, that if he had loved his neighbor as himself, he would have used his power to remove some of the snares and pitfalls which harassed the lives of others less fortunate. Gerson points out, moreover, that while no secular law ventured to kill the body for simple contumacy, the church, in such cases, had no hesitation in killing the soul; and he speaks in vehement terms of the innumerable and incredible troubles with which the ecclesiastical functionaries vexed the existence of the poor and friendless.[2] We can, therefore, well believe him when he declares that the abuse of excommunication had wrought confusion in the church, contempt for its spiritual censures, and the ruin rather than the salvation of souls.[3] It could hardly be otherwise when the vicegerent of Christ himself openly used, as did Sixtus IV., his supreme control over the sacraments for the purpose of extorting money from his subordinates, levying arbitrary and enormous subsidies from the Roman clergy, and enforcing their payment by a liberal use of excommunication.[4]

[1] S. Hildegardæ Vision. x. cap. xvi. (Baluz. et Mansi I. 444). See Martene, Ampliss. Collect. II. 1012–13, for an account of the approval of St. Hildegarda by St. Bernard and successive popes. In the first part of the Hist. S. Bernardi Lib. iv. cap. 22, it is stated that when permission was sought for publishing the Revelations of St. Hildegarda, Eugenius III. was consulted, and he, not confiding in his own judgment, submitted his opinion to the Council of Rheims for confirmation. (MS. in Arch. Seld. 130, Bib. Bodl.)

[2] Jo. Gersoni de Vit. Spirit. Animæ Lect. iv. Corol. xiv. Prop. 2. 5.

[3] Ejusd. de Potestate Eccles. Consid. iv.

[4] Infessuræ Diar. Urb. Roman. ann. 1484 (Eccard. Corp. Hist. II. 1940). Sixtus, among other devices, would sometimes cause a notice to be affixed to the doors of a church to the effect that unless a certain sum

A cognate abuse was that which authorized and even commanded the priest, in whose parish a violence or wrong was committed on an ecclesiastic, to suspend all divine service until due reparation was obtained, thus practically placing his whole flock under interdict. To what an extent this was carried to gratify the passions of those who held in their hands the salvation of the faithful is to be seen in the instructions issued by the synod of Prague in 1377, explaining that such remedy is not to be employed lightly or on every occasion. It tells the priest, for instance, that if he lends his horse and it is not returned, or if his cattle are driven off for damaging the pastures of others, he must not thereupon suspend the offices of the church,[1] showing how completely the control of the sacrament was perverted to private ends, and how minute was the tyranny exercised over the souls of all whose faith was sufficiently robust to preserve their veneration for the power thus persistently prostituted.

In the project of reform presented to the council of Constance by Cardinal Zabarella he deplores the frequency with which excommunication was pronounced for trifling injuries and temporal interests, and proposes a system by which the immense number of existing excommunicates should be restored to the church. All parish priests were to examine into the cases of those living deprived of communion, and to report them to the ordinaries, who, under pain of excommunication, were to absolve all who should be found legally entitled to absolution.[2] The project is eloquent equally as to the extent of the abuse and the indifference with which the censures of the church had come to be regarded, when they happened not to be enforced by the civil authority.

was forthcoming at once, the church would be interdicted, and its ministers deprived—a financial expedient which was abundantly productive.

[1] Mandat. Synodal. ann. 1377 No. 1 (Höfler, Concil. Pragens. Prag, 1862, p. 19). This was repeated in 1387 (Ibid. p. 35).

[2] Card. Zabarellæ Capit. Agend. in Conc. Constant. cap. xvii. (Von der Hardt T. I. P. ix. p. 529).

The only thing that was lacking to complete the atrocity of the system was found when the canonists devised the plan of making certain offences punishable with what was known as excommunication *ipso facto*, *ipso jure* or *latæ sententiæ*. This, as its various names indicate, required neither judge, trial, nor sentence—the offender was excommunicated by the fact of his offence, and was subjected to all the consequent penalties without warning. It could be prescribed even for internal sins as well as for external acts; for thoughts which no man knew, as well as for crimes notorious to all;[1] and thus the subject of it might be cut off from the church, and deprived of salvation without his own knowledge or that of others. This fortunate invention gave so much additional efficiency to the spiritual sword that it became widely employed. Thus in the quarterly cursing which was proclaimed in the English parish churches, until abrogated by Henry VIII. in 1534, almost every possible infraction of human and divine law was punished by this *ipso facto* excommunication, the severity of which was thus carefully explained by the officiating priest—"Wherfore I do you to understande that cursynge is such vengeance takynge that it departeth a man from the blysse of heven, from howsel, shryfte, and al the Sacramentes of holy churche, and betake hym to the devyll and to the paines of hell, the which shal endure perpetually without ende; but yf he have grace of our Lord hym to amende. But therfore se that no man or woman say that I curse them, for it longeth not to me, but for to shewe the poyntes and the artycles of the sentence of cursyng. For I do you wel to wyte, that whoso doth agaynst any of these poynts that I shal shew you, he is accursed in the deed doynge, of the Pope, Archebysshop, Bysshope, and of al holy chyrche."[2]

[1] C. A. Thesauri de Pœnis Eccles. P. I. cap. iii. iv. v. Theologians differed as to this, however, on which see Jacob. Simancæ de Cathol. Instit. Tit. XLII., but the exact line of demarcation between mental heresy and its external manifestation was very difficult to determine, and gave rise to much hair-splitting.

[2] Strype's Eccles. Memorials, I. 164, and Append. No. XLVI.

Then follows an enumeration of offences against the church, the king, and the law; and the care with which the rights of the former were thus guarded is shown by the section which curses delinquent tithe-payers—"And al that withhold tythes, or withdraw their tythes wytyngly or malycyously, to the harme of holy chyrche; or tythes let to be gyven of al the goodes which they be commaunded and ordeyned to be gyven by the law of holy chyrche, that is to say of al fruytes of yerds, cornes, herbes, the ware, fruyes of trees, of al maner of beestes that are newynge, of wol, lambe and chese, in tyme of the yere of swannes, gese, douves, duckes, of bees, hony, wax, of hey as often as it neweth: of flax, of hemp, of wyndmylles, or al maner of mylles, of al maner of marchaundise of chaffryng men and of men of craft. And al those that malycyously or wyttyngly ony of these thynges or ony other withhold, the which ought to be gyven to holy chyrche by goddes law, to the harme of holy chyrche, and al that therto procure in word or in dede."[1] It thus was found a very convenient weapon of defence against the invasion of spiritualities and temporalities, and it was threatened upon every occasion when the privileges or the property of the church were in question. A synod of Le Mans in 1248 naïvely observes that many persons are excommunicate without knowing it or their neighbors knowing it, in consequence of this *ipso facto* curse, and it therefore orders all parish priests on the first Sunday of each month to recite a list of nineteen offences visited with this penalty.[2] The number of the sins thus punishable increased with time, and in 1491, a synod of Bamberg made an enumeration of no less than one hundred offences thus punishable with *ipso facto* excommunication by the canon law, and it is curious to observe that in this long catalogue only twelve are disconnected with the direct personal interests of the church, while many are of the most trifling character.[3] To give a man

[1] Strype, *loc. cit.*

[2] Synod. Cenomanens. ann. 1248 (Martene Ampl. Coll. VII. 1399).

[3] Concil. Bamberg. ann. 1491 Tit. LXI. (Hartzheim V. 634–8).

over without warning to Satan for collecting toll from an ecclesiastic on crossing a bridge would seem but a slender exercise of Christian charity, and yet such was the use made by the church of the illimitable power which it claimed to enjoy under the special ordinance of God.

As corruption increased, however, the severity of these inflictions was somewhat mitigated by the facilities afforded for purchasing absolution. One iniquity thus to some extent neutralized the other, for the indulgences which were so fruitful a source of revenue to the successors of St. Peter not only remitted sins, but absolved from excommunications and interdicts.[1] In this as in so many other ways the central authority interfered with the provincial prelates and speculated on its own account in the exactions and oppression of its subordinates. If the one attempted to make money by withholding the sacraments, the other would intervene and grasp the prize in virtue of its superior authority.

EMANCIPATION.

The warnings of such men as Gerson were unheeded. Secure in the possession of temporal power, the church became less and less mindful of its spiritual duties, and its boundless authority was constantly devoted more and more exclusively to the purposes of individual ambition and the oppression of Christendom. The reform so pompously promised at Con-

[1] See the formula of indulgence issued by the agents of John II., King of Cyprus, when Nicholas V. granted him the right of selling them for three years, as a convenient mode of aiding him in his struggle with the Infidel.—Hacberlin, Analecta Med. Ævi pp. 565–8.

stance was easily evaded by the intrigues of those whose interests it would have compromised. Better things were expected at Bâle, but that council degenerated into an unseemly squabble between the head and the body of the church, which exposed both to contempt, and its efforts to diminish the abuse of excommunication and interdicts were of little avail.[1] Yet though the revolt of the Hussites had shown how infirm was the basis on which was erected the imposing structure of sacerdotal Christianity, the sounding promises of reformation extorted from the fears of the hierarchy were sufficient to postpone the dreaded revolution for nearly a century. The whole organization of the church, however, was so thoroughly interpenetrated with corruption that no internal efforts at purification could be successful. The Valley of the Shadow of Death had to be traversed to compel the surrender of the vested interests, the privileges, the prerogatives which produced so abundant a revenue and gave such ample liberty for the indulgence of passion and the exercise of despotic power.

Meanwhile the minds of men were gradually becoming emancipated. Already, in 1281, a synod of Anjou deplores the hardness of heart which led many to remain for years recklessly indifferent under the ban of the church, and so numerous were they that a regular inquisition was ordered throughout the diocese to ascertain their numbers and to make out lists of them for examination by the bishop. Even this was ineffectual through the timidity of the curates, who dreaded to incur the enmity of these children of wrath by exposing them.[2] In the passage above cited, Gerson alludes to the derision to which the jurisdiction of the spiritual courts was exposed by the selfish use made of it in purely temporal and worldly affairs; and, as time wore on, men began to speak more boldly. Even in the fourteenth century the German clergy had complained that excommunicates were not

[1] Concil. Basiliens. Sess. xx. cap. 2, 3.

[2] Synod. Andegavens. ann. 1281 cap. i.; ann. 1293 cap. iii. (D'Achery I. 733, 736).

deprived of standing in the secular courts, and the Emperor Charles IV., in 1359, endeavored to correct this laxity by imposing a fine of fifty pounds of pure gold on all who showed so little reverence for the censures of the church.[1] Not long after this Saint Brigitta declares that in Rome itself many persons cared no more for excommunication than if it were benediction, and that few priests prohibited the entry of their churches to excommunicates or hesitated to associate openly with them.[2] Nicholas de Clamanges indignantly alludes to the early church, when the awful anathema was only employed for the worst crimes, while now, he says, its abuse on every occasion, for the slightest offence, or even for none, has so destroyed human respect for it that it is held in supreme contempt.[3] This tendency continued unchecked, and the councils of the fifteenth century frequently remonstrate against the growing indifference with which the anathema was regarded by an irreligious laity. An elaborate formula of church discipline drawn up, but not adopted, by the council of Constance alludes to the fact that segregation from human society was more dreaded than the deprivation of the sacraments, and that wicked men when subjected to excommunication were accustomed by force or fraud to compel the bestowal of absolution ;[4] thus showing how completely the thunders of the church had lost their spiritual terrors. Very similar is the complaint, in 1456, of the Bishop of St. Andree to the provincial council of Salzburg that men remained under excommunication for a year and more without conceiving themselves debarred from frequenting the churches, and that they deterred, with terrible threats, the officials from visiting them with the canonical penalties.[5] More politic, but not more reverential, was the

[1] Caroli IV. Constit. de Immunit. Cleric. §§ 2, 7 (Goldast. II. 92-3).

[2] S. Brigittæ Revelat. Lib. iv. cap. 33.

[3] Nic. de Claming. de Ruina Ecclesiæ cap. ix.

[4] Reformator. Concil. Constant. Decretal. Lib. i. Tit. ix. (Von der Hardt T. I. P. xii. p. 683).

[5] Concil. Salisburgens. XXXVIII. (Dalham Concil. Salisburg. p. 233).

conduct of the Florentines when excommunicated by one of the worst pontiffs who disgraced the tiara. In punishing the conspiracy of the Pazzi, one of the victims was the Bishop of Pisa, who was hanged with his accomplices. Sixtus IV., who was deeply concerned in the conspiracy, seized this as an excuse for launching an anathema at Florence, but the community appealed from the sentence as unjust, saying that they had hanged him not as bishop but as a traitor who had conspired against their liberties.[1] This lack of reverence for ecclesiastical censures did not diminish, and in 1491 we find a synod of Bamberg re-echoing the complaint that laymen disregarded the anathema or visited with savage chastisement the official messengers who served on them the letters of excommunication; while many priests set at naught the sentences of other priests and did not hesitate to administer the sacraments to excommunicates. Evidently distrustful of the penalties which it threatened against such infractions of the canons, the synod strove to revive the fading terrors of the anathema by telling the faithful that in primitive times the disobedient and contumacious who were ejected from the church were forthwith seized by ravening demons.[2] Scarcely a synod, indeed, was held during the fourteenth and fifteenth centuries which did allude to the subject and endeavor to devise some means whereby the neglect of ecclesiastical censures could be overcome. All this was portentous of the future, and at length the open revolt of Luther stirred up the spirit of insubordination even among those who remained orthodox, leading to the discussion of the oppressions of the sacerdotal system with the determination to effect their removal. At the Diet of Nürnberg, for instance, in 1522, a list of grievances was drawn up to be presented in the name of the German nation

[1] Infessuræ Diar. Urb. Roman. ann. 1482 (Eccard. Corp. Hist. II. 1907).

[2] Synod Bamberg. ann. 1491, Tit. xi. xii. liii. (Hartzheim V. 602, 627) —"rapido ore daemonum trahebantur."—Cf. Hieron. Epist. xiv. ad Heliodor. cap. 8.

to Adrian VI., from whom so much was expected. In this catalogue of evils, the abuses of excommunication occupy a considerable space. The complainants declare that the anathema was constantly employed by venal episcopal officials from motives of the basest avarice, and that for filthy gain multitudes of Christians were driven to desperation, their property confiscated, and their souls and bodies destroyed. To render their extortions more productive, the officials often included the neighbors of the excommunicate, so that when he and his family had been ruthlessly driven into exile, ten or a dozen others were placed under ban, if they had held the slightest intercourse with the offender, in order that the required sum might be more surely exacted.[1] To all remonstrances that the censures of the church are not to be employed for pecuniary matters, the officials replied that the punishment was not for the money but for contumacy. If an ecclesiastic was killed, not only the slayer but the whole town or district was placed under interdict, until the homicide was avenged or paid for; and if a quarrel occurred in a cemetery, resulting in the shedding of a single drop of blood, an interdict was forthwith proclaimed, until the people raised enough money to pay for a new consecration of the spot.[2] Suspension of communion was mercilessly inflicted on those whose poverty

[1] In the reformation attempted by George of Bamberg, in 1465, he endeavored to prevent the customary exactions by an established fee bill, in which the price of removing an interdict of sepulture is fixed at 15 denarii and one pound of wax, while that for removal of a general interdict is twice the amount.—Georgii I. Episc. Bamberg. Reform. Consistorii Art. xlii. (Ludewig Script. Rer. German. I. p. 1183).

[2] This was a complaint of old standing. In 1418 the council of Salzburg indignantly denounces the audacity which led the laity to persist in burying their dead in cemeteries under interdict before the fines were paid. All corpses so interred are ordered to be dug up and thrown out of consecrated ground.—Concil. Salisb. XXXIV. can. xxxi. (Dalham, pp. 184-5). On the other hand, in 1465, George, Bishop of Bamberg, condemns the abuse of exacting payment for sepulture, and orders that thereafter no charge should be made for burial during interdict.—Op. cit. Art. xxxii. (Ludewig, *loc. cit.* 1178).

prevented them from paying their church-dues to the day; and at vintage-time the tithers, under pain of excommunication, forbade the gathering of the grapes until they could select their share, while from this delay the wretched peasant frequently saw the ruin of his crop from frost or rot. The prelates and religious houses which were patrons of livings reserved to themselves the larger part of the stipends, so that the incumbents were forced to eke out their existence by constant exactions, grinding their flocks to the verge of destruction, and enforcing their claims by a liberal use of the anathema. Other dissolute priests and monks, carrying weapons, brawling, drinking, and gambling, retained enough of their sacred character to be able to use the thunders of the church, and oppressed the miserable laity with impunity, forcing them to submit to all manner of abuses, and to purchase on their own terms escape from the dreaded censure.[1] To this had come the ideal theocracy of Hildebrand, and this terrible condition of society was the logical result of conferring irresponsible power on the fallibility of human nature.

That there was little if any exaggeration in this was shown when the aspirations of the orthodox culminated in the council of Trent, and the faithful hoped at last for the thorough reformation so often promised and so long eluded. As one nation after another presented to the venerable synod its projects and requests for reform, the abuses of ecclesiastical censures were dwelt upon with greater or less insistance, but with a unanimity which showed how widely spread and deeply felt they were. The Emperor Ferdinand urged the matter with an iteration which proves the importance attached to it in the estimation of his subjects; and he was supported by the Portuguese, the

[1] Gravam. German. Nationis ad Hadr. PP. VI. cap. 22, 23, 24, 36, 63, 66, 70 (Le Plat Monument. Concil. Trident. II. 179–202).

Compared with this, the complaint seems almost trivial of the Commons to Henry VIII., in 1529, that excommunications were granted "for small and light causes" on ex parte testimony and without warning, to be removed only on payment of fees that were ruinous to poor men.—Froude's England, ch. III.

Spaniards, the French, and even the Italians, each enumerating their own peculiar grievances.[1] It would be mere repetition to examine these in detail; their only present interest lies in their confirmation of what has already been described at length.

The spirit in which these propositions were received by the Roman Curia controlling the council may be estimated by the manner in which the French project of reform was treated. It was not presented until January 3, 1563, and the 31st Article declared that as excommunication was the supreme sword of the church it should not be invoked on all occasions and for trivial causes, but should be reserved for offences of the deepest dye, and then be employed only after three or at least two warnings. In reply the papal legates presiding over the council admitted that it should not be made use of constantly, but yet that mature consideration was requisite lest the church should be deprived of the censures which were her principal weapon; and with the same delightful ambiguity, the college of cardinals, to whom the whole was submitted, responded that the council should decide according to its best judgment, bearing in mind the cases in which execution was impossible, and that censures were the only arm of the church, especially against the absent and the powerful.[2]

The demands of the secular powers for a thorough reform of the church were so reiterated and so pressing that it finally became difficult to evade them longer, and as the hierarchy had secured what it desired it was eager to obtain the consent of its imperial and royal patrons to a dissolution of the council. For this purpose the papal legates, towards the end of September, 1563, shrewdly submitted a counter-project of reform for sovereigns, so artfully drawn up that it would have released the church almost entirely from secular influence, and have deprived the monarchs of the rights of patronage which they

[1] The documents are in Le Plat, T. IV. pp. 657, 759, 762, 766.—T. V. pp. 85, 230, 243, 261, 266, 566, 617, 641.

[2] Postulata Orat. Reg. Gallic. Art. 31 (Le Plat V. 641–2).

enjoyed under concordats and pragmatic sanctions. This of course drew from them a lively protest, and in the confusion thence arising the council was readily brought to an inglorious conclusion. This project, having served its purpose, was speedily cast aside, and yet it possesses a certain interest for us as showing how little the controlling minds of the church proposed to abandon the advantages arising from the use or abuse of excommunication.

It provided that all who appealed to the secular tribunals in cases subject to ecclesiastical jurisdiction should be *ipso facto* excommunicate, thus perpetuating and intensifying one of the worst excesses of the system which for certain specified acts subjected men to the anathema without trial and even without notice. The temporal authorities, moreover, were forbidden to demand the absolution or prohibit the excommunication of any one, thus destroying the supervision which in many places the state was beginning to exercise over the ecclesiastical courts. In addition, it forbade, under pain of the anathema, *ipso facto* and without notice, all invasions of the rights of the church, all laws and statutes to the contrary notwithstanding which were not in harmony with the decretals of the popes and the constitutions and claims of the church ; thus proclaiming excommunicate even the princes themselves for the exercise of the rights which they enjoyed under their respective concordats.[1]

Inspired by such a spirit, it is not to be supposed that the fathers of the council were disposed to abandon any prerogatives or surrender any of the powers of the church. In the Decree of Reformation, therefore, hurriedly adopted in December as the council was breaking up, the provisions respecting excommunication gave little promise of amendment. A vague command to distribute the censures of the church with discretion alleges as a reason the contempt to which their abuse rendered them liable, and their use for extorting evidence or to obtain

[1] Cap. de Immun. Cleric. et Reform. Principum, cap. 2, 4, 12. (Le Plat VI. 228, 229, 233).

the restitution of articles lost or stolen is to be exercised only by bishops after full examination and not in petty cases. In either civil or criminal affairs the episcopal ordinaries are instructed not to issue excommunications where property real or personal can be seized in execution, and where this cannot be had the spiritual sword is only to be unsheathed in cases of a certain gravity and after two admonitions. The interference of the secular magistrate is strictly prohibited, and the old rule is revived which authorizes the prosecution for heresy of any one remaining for a year under the ban of the church.[1]

While thus there was a pretence of removing the evils against which Christendom so loudly protested, there was the evident determination to mantain intact the pretensions from which those evils had inevitably sprung. This is clearly manifested by the council of Salzburg, convened in 1569 for the publication of the council of Trent, which issued a series of canons reorganizing the church in accordance with the Tridentine system. In treating of the subject of excommunication it expressly declares that the ancient power of the church in inflicting its censures is to be maintained in full vigor, and only concedes that the use of the spiritual sword shall be restricted to cases of importance sufficient to warrant its employment.[2] The formal abandonment of the right to inflict excommunication, with all the prerogatives attendant upon that right, had indeed not been expected, yet men had hardly anticipated so bold and so absolute an assertion of their continued and perpetual existence. In some respects, indeed, the Tridentine canons riveted anew the chains of the faithful, for, with the freedom of thought resulting from the Reformation even among the orthodox, there had arisen a general disposition to curb the abuses of spiritual censures. Thus when Charles V. despaired of any reformatory results from the long-eluded promise of a general council, and endeavored to reform for himself the church of the Empire, he

[1] Concil. Trident. Sess. XXV. Decret. Reform. cap. 3.

[2] Concil. Salisburg. XLVI. const. xlvi. cap. 1, 2, 3. (Dalham, op. cit. p. 495).

had forbidden the use of excommunication except in criminal cases when the offender proved incorrigible and had commanded that civil matters should be confined exclusively to the jurisdiction of the secular tribunals.[1] In this he had only given formal expression to customs which were rapidly spreading, for in many cases the local courts had begun to set some bounds to the oppression of the courts Christian in civil matters, and had presumed to forbid excommunication and to command absolution in certain cases—a presumption which, as we have seen, the Tridentine canons strictly prohibited for the future. This was a principle of no little importance. The celebrated Richardot, Bishop of Arras, in his address in 1564 to the Duchess of Parma, urging the adoption of the council of Trent, does not fail to point out how completely the reception of the council would liberate the ecclesiastical courts from the subjection into which they were falling through the corruption of the times.[2]

The civil authorities, also, were prompt to see the fresh tribulations in store for them under a reformation such as this. When the Duchess of Parma was striving to obey the orders of Philip II., and force the states of the Low Countries to accept the council, this point was one which called forth the unanimous remonstrances of the state council of Flanders and of the authorities of Hainault, Artois, Utrecht, Namur, and Brabant, as contrary to their rights and privileges and the prerogatives of the crown.[3] So in France, the encroachment of this article on the jurisdiction of the king and the parlement was one of the reasons which prevented the reception of the council of Trent.[4]

The logic of events, however, was more potent than the rhetoric of the Tridentine fathers. They might seek to restore

[1] Caroli V. Formul. Reformat. cap. xxii. (Goldast. II. 339).

[2] Le Plat, op. cit. T. VII. p. 28.

[3] Le Plat, T. VII. pp. 19, 33–4, 54, 67, 75, 88–9.

[4] See the Report of the Président d'Espeisses to Henry III. in 1583, and the Mémoire of the Président Le Maistre presented to the États assembled at Paris by the League in 1593 (Le Plat VII. 257, 270).

and to perpetuate the old order of things, but nothing could efface from the minds, even of the orthodox, the effects of the teachings of Luther and Calvin, and the successful rebellion of the Anglican church. The hoary belief in the supernatural attributes of sacerdotalism had received a fatal shock. Men at length felt at liberty to criticize the scandalous lives of their pastors, and mediæval veneration was fast disappearing. While such a spirit was abroad, it could indeed hardly be expected that the old reverence for the mysteries of religious observance could be preserved, when, even after the council of Trent, Gregory XIII. in 1573 had to deplore the fact that in many cathedral churches throughout Germany the priests and clerks during divine service occupied themselves with chatting, laughing, and quarrelling, sometimes even coming to blows; and that dying Christians frequently were deprived of the saving viaticum because the ministers of the altar were boozing in taverns, and could not be hunted up in time, or, if found, were so drunk that they could not administer the sacraments, while through the negligence of priests and bishops extreme unction had fallen into almost universal disuse.[1] When churchmen themselves showed so little sense of responsibility for the awful functions entrusted to them, the laity naturally yielded to the infection of the time, and began to regard the ecclesiastic as an equal and not as a demigod. However humbly the crown might thereafter treat the tiara, there was a new and most potential element introduced in the relations between the church and state, none the less powerful because not openly declared. The new order of things was fitly illustrated by Henry IV., when, with the mocking effrontery of which he

[1] Concil. Salisburg. XLVII. (Dalham, p. 576). It would be difficult to conceive of anything better fitted to destroy the reverence of the people for the sacrament than another custom condemned by Gregory. As the rules of the church forbade administering the Eucharist to those deprived of reason, the priests, when applied to for communion by idiots or the insane, saved themselves the trouble of contesting the matter by giving an unconsecrated wafer—a piece of jugglery with the body of Christ which the pope very properly denounced in fitting terms.

was so consummate a master, he replied in 1605 to one of the innumerable petitions of the Gallican church for the publication of the council of Trent: "Je souhaite la publication du concile avec la même ardeur que vous; mais les raisons humaines, comme vous venez de le dire fort bien, paroissent opposées à la sagesse divine. Cependant, je n'épargnerai ni mes soins ni ma vie même pour faire triompher l'église et la réligion."[1]

Thus Richardot, in an elaborate memorial on the measures necessary to restore the faith, deplores in 1566 the neglect and derision into which the censures of the church had fallen, and declares that even the heretics were more exacting than Catholics in the conditions imposed on sinners and backsliders for readmission into their damnable conventicles. He attributes this to the contempt felt for excommunication in consequence of its frequency, and recommends limitations on its employment.[2] So, in 1565, the council of Cambrai urged circumspection in the use of the censure, and complained bitterly of the continued interference of the secular tribunals;[3] but when the Bishop of Namur, as deputy of the council, presented to Margaret of Parma a long memorial arguing the supremacy of spiritual censures, the duchess contented herself with drily responding that the lay judges had always undertaken to prevent the abuses of excommunication which had been forbidden at Trent, and that if the clerks would obey the council strictly they would avoid all occasion for a conflict of jurisdiction.[4] Even Philip II. himself, when ordering Franche Comté, in 1572, to receive and publish the council, points out the limitations imposed by it on the current abuses of excommunication, and in order to render them effectual, directs that in future the sentences of the spiritual courts shall be intrusted for execution not to their own officials, but to those of the

[1] Le Plat T. VII. p. 279.

[2] Ibid. pp. 186-7, 193.

[3] Concil. Camerac. ann. 1565 Tit. XIV. cap. 3, 11 (Hartzheim Concil. German. T. VII. p. 111.

[4] Le Plat T. VII. pp. 127-30.

secular authorities.[1] To this growing tendency of the age is to be attributed the assertion of what were long known as the liberties of the Gallican church, and in 1594 Pierre Pithou was able to enumerate among them the prohibition of all excommunication for civil matters, except the recovery of things purposely concealed.[2]

The influences thus manifested could not, of course, but grow stronger with the progress of enlightenment and civilization, and the state at length emancipated itself wholly from the church. A formidable impulse was given to this movement by the quarrel which Paul V. rashly provoked with the republic of Venice, when he endeavored to force the repeal of two obnoxious laws by laying an interdict on the Venetian territories. The Seignory defiantly retorted by banishing all who obeyed the papal censures, and after a violent struggle Rome was glad to end the strife by an accommodation in which both parties simultaneously withdrew their offensive proceedings—except that the Jesuits were abandoned and remained excluded from Venice.[3] When, therefore, the French monarchy culminated in the person of Louis XIV., he was able, in his quarrel with the papacy over the "droit de régale," to dictate the celebrated declaration of 1682, by which his obedient clergy proclaimed to the world, "That St. Peter and his successors, the Vicars of Jesus Christ, and even the whole church, have received from God power only over spiritual things, concerning salvation, and not over temporal and civil matters. . . . . We therefore declare that, under the command of God, princes and kings are not subjected in temporal affairs to any ecclesiastical authority; that they cannot be deposed, directly or indirectly, by the power of the keys; that their subjects cannot be released from the allegiance and obedience due to them, or be absolved from the oath

[1] Le Plat T. VII. p. 221.

[2] Pithou, Libertés de l'Égl. Gallicane, art. 35.

[3] Griselini Memorie Spettanti alla vita di Fra Paolo, P. I.—Lünig. Cod. Ital. Diplom. T. II. pp. 2013–2020.

of fidelity; and that this doctrine, indispensable to the public peace, and as advantageous to the church as to the state, must be invariably followed as conforming to the word of God, to the traditions of the Holy Fathers, and to the examples given us by the Saints."[1] Nor was this an empty boast, though duly anathematized by Alexander VIII. and Innocent XII., and though the influences which surrounded the king led him formally to annul it in 1693.[2] When a certain brother Hyacinth, a Capucin professor of theology under the Regency, ventured to indulge in an argument to prove the legality of interdicts directed against sovereigns, he was seized and imprisoned, and his brethren had no little difficulty in interceding for his pardon.[3] Even Louis, notwithstanding the rapid advancement of his Jesuit-ridden dotage, had maintained his position with sufficient firmness. An ordonnance of 1695 had defined peremptorily the limit of ecclesiastical jurisdiction to spiritual matters, and even in these the "appel comme d'abus" had given a superior appellate power to the civil courts.[4] How thoroughly independent the secular authorities had become under these inspirations is shown by an affair occurring in 1698. The "monitoire," a proclamation by the episcopal ordinary, threatening excommunication to extort the revelation of a crime, was strictly forbidden unless the assent of the civil tribunals had been obtained. In June, 1698, the Duc de la Meilleraie procured from the Sovereign Council of Colmar permission to apply for such a document to the Bishop of Bâle, with respect to some trespasses committed on his estates, but he changed his mind and obtained it of the pope. On causing it to be published, the Council took the matter up as unauthorized, and in December, 1698, ordered the monitoire

[1] Declarat. Cleri Gallicani art. 1 (Isambert, XX. 384).—In 1810 this declaration was made a law of the state by Napoleon, in response to the excommunication launched at him by Pius VII. (Dupin, Manuel du Droit Publique Ecclésiastique, p. 119.)

[2] Isambert, XX. 380.

[3] Monteil, Traité des Matériaux MSS., II. 143.

[4] Ordonn. d'Avril, 1695, art. 34–37 (Isambert, XXI. 253).

to be suppressed, and directed proceedings to be commenced against all concerned in its publication.[1]

Thus gradually came to an end the alliance between church and state which Charlemagne found so efficient in his civilizing policy, and which proved so disastrous to his successors. The pretensions of the False Decretals led so inevitably to the monopoly of all power by the church, that when they were once recognized no monarch could ask its assistance in reducing his subjects to obedience without himself becoming its slave. We have seen to how much of petty tyranny and oppression this gave opportunity, yet on the whole there can be no question that it advanced the interests of civilization, and that the average influence of the church was for the benefit of the people. When Innocent III. boldly stood forward as the sole defender of Ingeberga of Denmark against her powerful and resolute husband, Philip Augustus, he taught the reckless spirit of feudalism that might does not always make right. In those turbulent ages it was only the church that could interpose between power and its victims, and the church could not do this unless armed with the ability to coerce as well as to persuade. On the other hand, it must be borne in mind that many of the evils thus combated were indirectly created by the influence, the connivance, or the supineness of the church. If the laity were fierce and lawless, it was because the church had proved false to its great mission, and had employed its almost illimitable power not in softening the manners of mankind and inclining their hearts to the truths of the Gospel, but in consolidating its authority and increasing its worldly possessions.

The weightiest evils of this incongruous mingling of spiritualities and temporalities fell upon the church itself. As its claims to supremacy became recognized and admitted, it natu-

[1] Ordonnances d'Alsace, T. I. p. 281. Comp. Arrêt of 1717, prohibiting the reception or publication of all papal bulls, letters, etc. (except letters of penitence), without royal letters patent (Ibid. p. 486).

rally employed its power for its own aggrandizement. Its claim to the kingdom of heaven became a stepping-stone to the kingdom of earth, and its spiritual privileges were chiefly valued as they could be employed for the gratification of worldly ambition. The sheep were tended that they might be shorn. To the covetous and unscrupulous an ecclesiastical career opened the shortest avenue to success, and the church accordingly became filled with the covetous and unscrupulous, bringing in their train corruption of every kind, and oppression which rivalled that of the feudal seigniory. When this was at length carried beyond human endurance, Europe arose with a universal protest. The bolder spirits emancipated themselves alike from the dogmas and the dominion of Rome; the more conservative preserved their reverence for the doctrines of Latin Christianity, but plainly showed that their allegiance was to be secured only by the abandonment of the prerogatives which the critical spirit of inquiry discovered to be as destitute of authority as they were unsuited to the new requirements of modern civilization. The struggle was long and intricate. For a century or more the press, the pulpit, and the battle-field were by turns or simultaneously the arena on which the new era and the old contended for mastery, and when at length physical exhaustion brought about a truce at the peace of Westphalia, although the Roman church apparently held her own, it was no longer on the same terms as before. The princes who had fought her battle had secured their pay. They were no crusaders who had drawn the sword unselfishly for the propagation of the faith, and if they had preserved her existence, their price for the service had been emancipation.

Their emancipation proved to be likewise the emancipation of the church. As its temporal authority declined, its spiritual energy revived. The change, it is true, was slow, and did not become fully manifest until the Revolution of '89 relieved the hierarchy still further from the burdens which kept it weighed down to earth. Since then it has gained enormously in all that constitutes real power over the souls and consciences of

men. Unfortunately, however, this has been accomplished in spite of itself, and it still clings to the old traditions and mourns over the disgraceful glories of the past.

The spirit of the hierarchy is unchanged and apparently unchangeable. According to Pius IX., in his allocution of 1849, the impotence of the church to impose its yoke on others is bondage and shameful servitude;[1] and, careless of the teachings of the intervening twenty years, he shows what that yoke is by reviving in 1869, as recorded in the journals of the day, an obsolete order which requires all physicians to cease attendance, and abandon to his fate, any patient dangerously ill, who, within three days after seeking medical aid, shall not have confessed his sins, and expressed his willingness to receive extreme unction. Destined to perdition in the next world, he is to be abandoned helpless to his fate in this, and the voice of humanity is to be stilled for him who cannot be forced into dependence on the spiritual ministrations of the priest.[2] When the Vicar of Christ conceives that his duty to God requires him to use such means to reclaim his erring children, we learn the full significance of the principles proclaimed in the Encyclical and Syllabus of December, 1864, where any denial of the imprescriptible rights at any time possessed by the church is condemned as absolute heresy. It is a damnable

[1] Alloc. Quibus Quantisque, 1849 (Recueil des Alloc. citées dans l'Encyclique et le Syllabus de 1864, Paris, 1865, p. 224).

[2] The fourth council of Lateran, in 1215 (can. 22), ordered all physicians, as soon as they might be summoned to attend a patient, to urge him to confession, alleging as a reason that disease was frequently the punishment of sin, and that recovery would be promoted by absolution. In 1566, Pius V. promulgated the regulation, revived by Pius IX., requiring the physician to cease attendance when the patient neglects, after three days' warning, to send for a confessor (cap. 1 Tit. vi. in Septimo Lib. III.). I find the observance of this regulation enjoined by Marcus Sitticus, Archbishop of Salzburg, in the instructions drawn up for the visitation of his province in 1616 (Statut. Visitat. Salisburg. ann. 1616 Tit. I. cap. vi.—Dalham, p. 603) at a time when the toleration of Lutheranism by the Duke of Bavaria rendered the church keen to employ every means for the repression of heresy.

error to assert that the church has ever exceeded her rightful prerogatives; that the state should be independent; or that the church should not be allowed to coerce into submission all who may disregard her authority.[1]

Indeed, the catalogue of offences entailing *ipso facto* excommunication enumerated by Pius IX. in his Bull of Oct. 12, 1869, reviving and modifying the Bulls *in Cœna Domini* of his predecessors, shows that the church is resolute to maintain the old abuse of power, though it may not be willing to encourage the abuses of its application in detail. On the plea of reducing the vast accumulation of canons which denounced this iniquitous sentence, he proceeds to codify and rearrange, and thus to bring freshly before the world, the fearful censure which condemns, without trial and without appeal, all transgressors to perdition. Heretics are thus reminded of their inevitable fate;[2] all who question the papal power are included in the ban; and the reading or possession of any book prohibited by the *Index* is sufficient to involve the unlucky owner in the curse. In the same mood all the rights, prerogatives, and privileges of the church are guarded with this tremendous anathema; nor, in his serene assumption of performing in this a work of charity, does Pius for a moment seem to think of the countless millions of human souls whom he is delivering over helpless unto Satan in the exercise of the powers conferred on him by Christ through St. Peter. As of old the one unpardonable sin is disobedience to the church and to its visible head on earth.[3]

Nor is the machinery of excommunication as a means of preserving the spiritual and temporal influence of the church,

[1] Syllab. Prop. 23, 24, 41, 54, 55.

[2] In this Pius is merely recalling to the attention of the world the forgotten abuses of the past. "Hæretici omnes jure pontificio excommunicati sunt, et quotannis a pontifice maximo excommunicantur." Jac. Simancæ de Cathol. Instit. Tit. III. No. 1; Tit. XXVII. No. 1 (Romæ, 1575).

[3] Bull. *Apostolicæ Sedis*, IV. Id. Oct. 1869.

confined to the hands of the pope. The inferior orders still occasionally employ it with a vigor worthy of the dark ages. In the Belgian Chamber of Deputies a debate occurring Feb. 22, 1881, on the attitude of the clergy towards the public schools, brought to light a misuse of the anathema as flagrant as any committed by Hildebrand or Innocent III. It was shown that, not content with withholding the sacrament from the students of these schools and their relatives, excommunication was freely lavished for merely boarding the scholars, or for visiting families whose children frequented the schools, thus putting in practice the segregation threatened by the canons. In one case the whole *conseil communal* was excommunicated to the fourth generation for appointing a schoolmistress objectionable to the curé.[1] It is perhaps hardly to be wondered at that the less yielding government of Prussia should (April 19, 1882) have been roused to take action on the subject, and that it notified the Bishop of Ermeland that, as sentences of excommunication clash with the German law and affect unfavorably the social status of those against whom they are directed, in future governmental permission must be obtained before their fulmination. It is not so easy to understand the good Bishop's apology, which asserts that civil honor is in no way affected by excommunication.

The ideal of Hildebrand is evidently still the ideal of the ruling hierarchy. The priest is still the supernatural being set apart by God, wielding the full power of Christ, who has bestowed His authority on him.[2] The bishop is still clothed by divine law with the right to the unlimited and unqualified obedience of the faithful, while the state only possesses a limited and qualified claim to the allegiance of the citizen, and, when the two powers conflict, divine law of course must override human law, the church, as a "Divine Institution," being

[1] N. Y. Nation, Ap. 21, 1881, p. 279.

[2] "Potestas enim quæ in Christo inest, eo quod Deus sit, ab Ipso Sacerdotibus communicatur."—Concil. Plenar. Baltimor. II. ann. 1866 Tit. x. cap. 1 No. 456 (Acta Concil. Plen. Balt. II. Baltimoræ, 1868, p. 231).

necessarily the arbiter "whose authority the state is bound to respect as supreme in its sphere."[1] As of old, this right to the unquestioning submission of the faithful is enforced by the control over the sacraments, through which the gates of heaven are closed and the portals of hell are opened to the eternal and changeless destiny of him whose contumacious obstinacy causes him to die outside of the pale of the church.[2] If the nineteenth century is not subjected to the theocracy which ruled the thirteenth, it therefore is through no abatement in the claims of the church to universal domination, but because a godless and irreligious generation refuses to render due reverence to the ordinances of God. Yet as the church has gained so much of spiritual vitality in spite of the reactionary efforts of her rulers, we may not unreasonably hope that her progress may still continue. Her real friends are those whom she regards as her worst enemies; and in the possible triumph of her avowed policy, however much the advance of civilization might be retarded, she herself would be the greatest sufferer.

[1] Pastoral Letter of the Plenary Council of Baltimore, §§ 2, 3 (Ibid. pp. cviii.–ix.). The direct application made of this claim of obedience to the condemnation of the Fenian movement (ubi sup.) shows that the supremacy of the bishops is not understood as confined to faith and morals alone, but extends to the region of politics. Indeed, the leading organ of the church in America, the Catholic World, of July, 1870, does not hesitate to instruct the faithful that, "in performing our duties as citizens, electors, and public officers, we should always and under all circumstances act simply as Catholics. . . . The supremacy asserted for the church in matters of education implies the additional and cognate function of the censorship of ideas, and the right to examine and approve or disapprove all books, publications, writings, and utterances intended for public instruction, enlightenment, or entertainment, and the supervision of places of amusement."

[2] Instruct. Sac. Cong. de Propag. Fide No. 1 (Ibid. p. cxxxvii.).

THE REFORMED CHURCHES.

In the reformation of the fifteenth century, the Protestant churches received the power of excommunication as part of the inheritance which they divided with their elder sister, and this sketch can hardly be concluded without some reference to the use which they made of the legacy.

Of course the first conclusion to which a heretic can come is that the power which seeks to control him is illegitimate and not entitled to obedience. Thus Wickliffe taught that no one should be excommunicated by man until after he had been excommunicated by God, which was placing a serious obstacle before the ecclesiastical courts. His own experience had probably led him to the doctrine that any prelate was a traitor who excommunicated one who had made an appeal to the king; and he had no hesitation in asserting that the anathema of pope and prelate alike was to be condemned.[1] Wickliffe himself, however, did not hesitate to threaten others with excommunication, and a tract which passes under his name simply condemns the abuses of the censure, regarding it purely as a remedial measure, and one not to be employed either for revenge or extortion.[2] The "Apology for Lollard Doctrines," attributed to Wickliffe, moreover, merely asserts that the church may not curse except as ordered by Christ, "but acording that man be cursid, for the honor of God, and profit of himsilf, and of the peple, with mani final leful leke causis os it semith of the peyn of dampnid men."[3] A century later, the Scottish heretics known as the Lollards of Kyle were accused on their trial of asserting that the censures of the church were not to be dreaded.[4] In fact, Wickliffe and his followers only inter-

[1] Artic. Damnat. Joann. Wickliff No. 11, 12, 13, 20, 30, 34.—Concil. Constantiens. Sess. VII. 1415, Mail 4.

[2] Tractat. de Offic. Pastoral. Lib. I. cap. vi. (Leipzig, 1863, p. 14).

[3] Apology for Lollard Doctrines, pp. 17–9 (Camden Soc. 1843).

[4] Spottiswoode, Hist. of Church of Scotland, I. 121 (Edinburgh, 1851).

posed the right of private judgment by which the offender should decide whether the condemnation passed upon him were just or not—a very natural position for men so circumstanced, but one which could be accepted by no organization, especially in days when men relied on force alone.

John Huss followed inevitably in the same path. He vehemently denounced the abuses of the anathema by which worldly ecclesiastics filled their purses and oppressed the people; and he reasonably enough compared the doctors who argued that the civil authorities should be employed in coercing the obdurate to the Scribes and Pharisees who declared that they could not shed blood, and who therefore delivered Jesus Christ to Pontius Pilate for punishment.[1]

It is well known how slowly Luther reached the point of disclaiming all allegiance to the church of Rome. When in 1517 he offered to defend in disputation his celebrated ninety-five propositions, he had been fired by the nameless abuses of the system of indulgences which he assailed, and he doubtless believed, as he professed to do, that the papacy and the church would encourage him in the good work. The sacerdotal structure, however, had been erected by cunning hands, and every stone had been so fitted into its fellow that none could be disturbed without shaking the whole edifice. Under the remorseless logic of the scholastic theology, the most monstrous pretensions of the hierarchy were the irrefragable conclusions from premises which could not be overthrown without overthrowing tradition, canon, and decretal. All that zealous churchmen held most dear must be swept away, and the church reduced to its primitive simplicity, ere Tetzel could be convicted of blasphemy when he declared that the indulgences offered for sale would insure eternal salvation, even if the

[1] Concil. Constant. art. Damnat. Joann. Huss No. 14, 17, 18, 19 (Hartzheim V. 86–7). Huss's argument on the subject at his trial can be found in Von der Hardt T. IV. p. 320.

purchaser had committed rape on the person of the Mother of God.[1]

Luther took no heed to this, nor did he see how utterly he was denying the power to bind and to loose, on which was

[1] Though Tetzel has acquired an infamous notoriety from happening to be the object which aroused Luther's indignation and thus led to the Reformation, he was no worse than his fellows. The whole system had long been a scandal to the devout.

Indulgences, as an important resource for the church, first attracted attention at the council of Clermont, in 1095, where plenary remission of sins was offered as an inducement to those who from pious motives should join in the crusade (Con. Claromont. ann. 1095 can. ii.—Cf. Conc. Synod. Urbani PP. II.—Hardouin VI. II. 1718, 1724). The dialectic skill of the schoolmen easily proved that the church possessed a treasury of salvation, arising out of the sacrifice of Christ and the superabundant merits of saints and martyrs, which it could dispense at will, either to remit the sins of the living or to shorten the pains of purgatory (Thom. Aquin. Summ. P. III. Suppl. Art. I.) in return for good works performed by the postulant; and although in theory this required on his part confession and repentance, the important point practically soon assumed the form of a money payment to be devoted ostensibly to pious uses—a financial measure which could not, in the existing condition of society, but speedily lead to great abuses. Already, about the year 1200, Cæsarius of Heisterbach relates that the good monks of St. Nicholas of Bruweiler, desiring to enlarge their church, employed some secular priests skilled in extracting money, to travel around with the tooth of their patron saint; but these hirelings behaved so disreputably that the indignant relic, in token of displeasure, broke the crystal in which it was set, and the monks resolved never to expose it to such contamination again (Cæsar. Heisterb. Dial. Mirac. Dist. VIII. cap. lxviii.). These "pardoners" or "quæstuarii," indeed, from an early period, gained a generally evil reputation. In 1276 Gilo, Archbishop of Sens, promising an indulgence to all who should repair to Blois on the occasion of the approaching feast of the Crown of Thorns, forbids his letters of indulgence to be hawked about by such means, and pronounced them, in such case, to be null and void (Martene Thesaur. I. 1152-3). Constant efforts were made by the local churches to restrain these pedlars of salvation and limit their operations (Synod. Cenomanens. ann. 1248; Synod. Remens. ann. 1303; Synod. Carnotens. ann. 1325 c. 18, ann. 1368 c. 53—*ap.* Martene Ampl. Collect. VII. 1330-1, 1364, 1366, 1399); and the mercantile aspect which the transaction sometimes assumed is shown by a provision of the Synod of Liége in 1287 prohibiting priests and deans from making contracts with quæstuarii about sums to be raised in the

founded the existing theocracy, when he gave utterance to such propositions as these: "The Pope has neither the power

future (Martene Thesaur. IV. 858). The light in which the pardoner was viewed by the laity is fairly set forth in Chaucer's description:—

"He saide he hadde a gobbet of the seyl
That Seint Peter had, when that he went
Upon the see till Jesu Christ him hent.
He had a crois of latan ful of stones,
And in a glas he hadde pigges bones.
But with these relikes, whanne that he fond
A poure persone dwelling up on lond,
Upon a daie he gat him more moneie
Than that the persone gat in monethe tweie.
And thus with fained flattering and japes
He made the persone and the peple his apes."
Canterbury Tales, Prologue.

And nearly two centuries later Sir David Lyndesay thus presents one of them as vending his wares:—

"I am Sir Robert Rome-raker
Ane perfite publike pardoner,
Admittit be the Paip.
Sirs, I sall schow yow for your wage
My pardons and my pilgrimage,
Quilk ye sall se and graip . . .
. . . My patent pardons ye may se,
Cum fra the cane of Tartarie,
Weill seald with oster-schellis . . .
. . The culum of Sanct Bryd's kow;
The gruntill of Sanct Antonis sow,
Quilk buir his haly bell.
Quahever he be heiris this bell clinck—
Gif me ane ducat for till drink—
He sall never gang to hell."
Satyre of the Thrie Estaits
(Early Engl. Text Soc. 1869, pp. 453–55).

The evil courses of these graceless gentry were a cause of constant complaint. As early as 1274 a paper containing matters to be acted upon by the council of Lyons enumerates the lies and immorality, the avarice and selling of false relics of the vendors of indulgences (Martene Ampl. Coll. VII. 197). In 1311 the council of Vienna thought to find a remedy for the evils which it deplored by requiring them to be provided with either papal or episcopal letters of authority (Lib. v. Clement. Tit. ix. c. 2), but this was a slight palliative. In 1402, Boniface IX., under the guidance of Balthazar Cossa (afterwards John XXIII.), sent into Germany and Denmark a small army of pardoners, who, according to an eye-witness, were wont to declare that St. Peter himself had no more power than they to procure the remission of sins. In less than two years they returned with spoils amounting to more than 100,000 golden florins, and this was probably but a small portion of the treasure extracted from the pouches of the faithful (Theod. a Niem de Vit. Joann. XXIII.). These scandals afforded too favorable a point of attack to be neglected by Huss and the Bohemian reformers, and their denial of the efficacy of papal indulgences was one of the chief accusations against them at the council

nor the desire to remit any penalties except such as are imposed by himself or by the canons." "The Pope cannot ab-

of Constance. The indictment against Jerome of Prague relates that in 1411 he had caused papal bulls of indulgence to be hung on the breasts of strumpets who were paraded in a wagon with a contemptuous inscription and taken in procession to the market place where the obnoxious letters were publicly burned (Von der Hardt T. IV. p. 672). The orthodox Chancellor Gerson was hardly less outspoken; he inveighs bitterly against the managers of these frauds as lying to God and man with their pretended indulgences and dispensations, preaching falsehoods and calling good, evil, and evil, good, and he predicts that if these abuses be not corrected by the approaching council of Constance they will prove the ruin of the church (De Reform. Eccles. cap. xxv.). The council did in fact propose to abolish them as an intolerable evil which pauperized the community and was a direct incentive to sin, but this, like all its other projects of reform, was left undone (Reformator. Constant. Decret. *ap.* Von der Hardt T. I. P. xii. p. 751). The council of Bâle, so far from following this up, proposed in 1435 to have recourse to the sale of indulgences for the purpose of defraying the expenses connected with the expected reunion of the Greek church; and the light in which the church's treasure of salvation was viewed by the community is seen in a protest recorded by the German section of the council, to the effect that the indulgences should be distributed throughout Christendom, and not confined to Germany alone; that to avoid the suspicion of fraud the sellers should be appointed by the secular authorities and the money be paid in to them; that if not employed for the purpose alleged, it should be devoted to pious uses; and that, as a condition precedent, all other indulgences, including those of the pope, should be withdrawn. If these conditions were accepted, then, although Germany was exhausted by the Hussite wars, she would permit the proposed collection (Martene Ampl. Coll. VIII. 798). The council of Mainz, in 1451, endeavored to impose some check on the abuse by requiring the sellers of indulgences to procure the license of the bishop before operating in any diocese, and forbidding them from exposing for sale any form of indulgence not expressed in the episcopal letters (Conc. Mogunt. ann. 1451 can. vii. *ap.* Martene Ampl. Coll. VIII. 1006); and in 1456 the council of Saltzburg complains that for one pound these pardoners would buy from a church a letter of authority, on which they would manage to collect forty or fifty pounds a year, squandering the proceeds in all manner of riotous living, to the infinite disgust of all good Christians (Dalham Concil. Salisb. p. 239). The very next year, a high dignitary of the church of Mainz, in enumerating the grievances inflicted on Germany by Rome, includes the indulgences which were perpetually multiplied for the purpose of extracting money (Von der Hardt T. I. P. v. p. 182). In 1491 the synod of Bamberg energetically de-

solve any sin except in declaring and approving its absolution by God." "The Pope in granting plenary remission of punishment only means the remission of that imposed by himself." "The dying are released from all in dying."[1] Those whom he thus attacked were keener than himself, and easily perceived the conclusions to be drawn from such premises. With all the confidence of prescriptive right, they therefore conceived that he was sufficiently refuted in showing that these principles were incompatible with the existing practice of the church. Thus in the counter-propositions put forth in the name of Tetzel, the latter axiom of Luther was replied to by pointing out that heretics, schismatics, and traitors were excommunicated and anathematized even after death, and their buried bones exhumed.[2]

In the progress of the disputation, Luther could not help advancing step by step, as the logic of his adversaries forced him to recur to the fundamental principles of sacerdotal theology, since the refutation of their conclusions depended on destroying their premises. Two sermons preached by him in 1518 sweep away the whole system of canonical penitence; and in another series of propositions issued for public disputation, he advances nearly to his great foundation-element of justification by faith, in denying emphatically the necessity of sacerdotal intervention between God and man for the remis-

nounced the lying pardoners who not only released men from all their sins but professed to be able to transport souls from the torments of Purgatory to the bliss of Paradise; it annulled all the privileges which had been granted to local churches of issuing letters of indulgence, and required the hawkers to be provided with both papal and episcopal letters (Synod. Bamberg, ann. 1491 Tit. lv. *ap.* Hartzheim V. 628). How little efficacy there was in such measures, we learn from the performances of Tetzel. Warned by these scandals and their result, the council of Trent repressed the grosser abuses (Concil. Trident. Sess. xxi. de Reform. c. ix.—Sess. xxv. Decret. de Indugent.), but the Thomist doctrine on the subject remains unchanged.

[1] Disput. M. Lutheri No. 5, 6, 13, 20 (Opp. Jenæ, 1564, T. I. fol. 2, 3).

[2] Primæ Disput. Joann. Tetzelii Prop. 38 (Lutheri Opp. T. I. fol. 6 *a*).

sion of sins.[1] This would necessarily break down all the machinery of confession, penitence, absolution, and excommunication on which depended the whole spiritual and temporal authority of the hierarchy—yet Luther was still unprepared for such a revolution. Another sermon preached about this time on Excommunication reveals to us the transition state of his mind, and the struggle inevitable between his efforts to liberate himself and the inveterate habit of obedience. Christ himself, he exclaims, had not during life the power of cutting off a soul from God. Yet excommunication is the maternal and kindly chastisement inflicted by the church, not to condemn to hell but to restore to salvation those who are hastening to destruction, and therefore should it be received with gladness and reverence, and be borne with exhaustless patience. While rebuking in the strongest terms the abuses to which it gave occasion, he still declares that even when undeserved it is to be endured as the lovingly intended though mistaken punishment inflicted by a tender mother. Corrupt as may be the hands through which it is administered—even those of a Herod, a Pilate, an Annas, or a Caiaphas—yet are not they to be regarded, but only the motherly church from whose benignant power it flows. To bear an unjust excommunication is the noblest of good works. Yet with all this teaching of implicit obedience, his native independence flashes forth at the end. No excommunication is to be obeyed if obedience leads to sin. Better to die excommunicate, for what, in comparison with injustice, is a death-bed without the sacrament and the loss of funeral rites and Christian sepulture? Blessed for ever is the just man who dies excommunicate for adhering to the right, for the earthly penalty will be rewarded with an eternal crown.[2]

These bold assertions were pregnant with immeasurable revolt. Here was the right of private judgment asserted against

[1] Opp. T. I. fol. 11 sqq. fol. 25 *a*.

[2] Concio de Virtut. Excom. (Opp. I. fol. 164–66).

the universal voice of the church, and her censures were held to affect the body alone. The soul was beyond her reach, and dealt directly with the Creator. Yet on March 5 of the following year, 1519, we find him writing to Leo X. that he most fully receives the Roman church as supreme over all, in heaven and earth, except Jesus Christ alone, and begs him to disregard the lies of those who would persuade him otherwise.[1]

Luther might deceive himself as to the extent of his rebellion, but the Roman curia labored under no such delusion. By persuasion or by force he must be suppressed, and as argument thus far only drew him on to further and more dangerous positions, the long deferred sentence at length was pronounced. In the bull of excommunication, dated June 15th, 1520, among the damnable errors imputed to him were enumerated that he asserted excommunication to be only an external punishment, which did not deprive the convict of his share in the general prayers of the church; and that Christians should be taught rather to love than to fear it.[2] These opinions Luther freely acknowledged, saying that they were to be found fully justified in his sermon on excommunication, and that, with all the rest, he pledged himself to prove these good Christian doctrine, under pain of eternal malediction.[3]

Leo X., however, did not propose to trust longer to the wordy disputations which had already proved so unsatisfactory. In his bull he gave Luther and his followers sixty days for recantation, after which they were to be held *ipso facto* as under the major excommunication, including deposition and disability for churchmen, while laymen were visited with forfeiture of all their possessions and the penalties incident to heresy, treason, and outlawry. No one was to hold any communication with them, to render them any assistance, or supply them with the

[1] M. Lutheri Epist. ad Leon. X. (Ibid. fol. 210 *b*).

[2] Bull. Exsurge Domine § 2 No. 23, 24 (Mag. Bull. Roman. Lugd. 1692, T. I. p. 615).

[3] Lutheri Opp. T. II. fol. 286–7, 305.

necessaries of life.[1] All civil and secular powers were ordered, under the same penalties, to seize and deliver them to the papal officials, receiving rewards for the service; and all places where they might sojourn were subjected to an interdict during their stay, and for three days after their departure.[2]

Though Leo, in sending, July 8th, 1520, a copy of this bull to Luther's patron, the Elector Frederic, was careful to inform him that it was drafted under the especial influence of the Holy Ghost, which never was absent from the Apostolic See, yet that sagacious prince did not in the least obey the accompanying command to make Luther abjure his errors or to deliver him at once to the papal officers. We have Luther's assertion, indeed, that the Elector received the envoys with scant courtesy and drove them from his presence with a sharp reproof.[3] The sentence, in fact, contained nothing but what, for at least three centuries, the church had had an undisputed right to decree, but people were beginning to think for themselves and to criticize where once they were content to obey. Jurists were found to assert that it was an infringement of the privileges of the Holy Roman Empire for the pope to talk about stripping laymen of their fiefs and possessions, and even Erasmus declared that the ferocity of the bull, so unworthy of Christian charity, disgusted all right-minded men.[4]

It was not until October 3d that Dr. Eck, the papal nuncio, officially sent a copy of the bull to the University of Wittemberg, but Luther had already parried the attack after his own fashion, in his treatise on the seven sacraments, entitled the Babylonian Captivity of the Church. In considering the sacrament of ordination he pronounced it a figment, invented for the oppression of mankind—"We Christians are all equally priests. Those whom we call priests are men chosen from

[1] Ulric Hutten's characteristic gloss on this passage is "Etiam matulam non porrigent" (Lutheri Opp. T. I. fol. 484 *a*).

[2] Bull. Exsurge Domine, §§ 5–19.

[3] M. Lutheri Præfat. (Opp. T. I.—T. II. fol. 257).

[4] M. Lutheri Opp. T. II. fol. 314.

among us to act in our name. The priesthood is only a function. . . . By this figment of sacramental ordination they obtain the power to command, to threaten, to oppress. It is simply a beautiful device to justify the wrongs which have been and still are perpetrated in the church. Thus has Christian brotherhood been destroyed, and thus our shepherds become wolves, our servants tyrants, and our clergy become more than mortals."[1] This was a blow aimed at the heart of the enemy. It deprived the priest of his supernatural powers; he was no longer a man set apart from his fellows by God, and endowed with some of the attributes of God, and his curse or his blessing was alike impotent. It went even further than this, however, for it destroyed all the prerogatives and immunities of the church. The ecclesiastical power was no longer superior to the secular. The civil government was reinstated in its old supremacy, and the clergy were its subjects, to obey its laws and submit to its authority.

If the orthodox expected that, because Luther had inculcated patient submission to unjust excommunication, he would meekly endure the censures of Leo, they egregiously mistook the combative spirit of the man. By December 1st he had a hastily prepared answer ready for publication, in which he pretends to doubt the authenticity of the bull, as it could only have been drawn up by Antichrist. "What more can I ask," he cries, "than that I may never be absolved, reconciled, or joined in communion with that most ignorant, most impious, and most ferocious Antichrist?" Yet, though his doctrines had swept away the whole theory of excommunication and of the anathema, he does not hesitate, in the blind fury of his wrath, to retort the curse—"If the spirit of Christ and the strength of our faith be of any avail, by these letters we condemn you, if you persist in your fury; and we deliver you with your bull and all your decretals unto Satan, to the destruction of the flesh, that your soul may be saved with ours in the

[1] De Captiv. Babylon. Eccles. (Opp. T. II. fol. 282 *b*).

day of the Lord. In the name of Jesus Christ whom you persecute, Amen! . . . And as they, for their sacrilegious heresy, excommunicate me, so I, for the holy truth of God, excommunicate them. May Christ be the judge to determine which excommunication is the better, Amen!"[1]

This was not enough. In Luther's frame of mind it was easy for him to persuade himself that a more defiant proof of his contempt for the censure launched against him might be beneficial to the cause and reassuring to his followers. The bull had ordered all Lutheran books and writings to be collected and publicly burned, and this had been done in many orthodox places. He doubtless, therefore, deemed it an act of poetical justice to retort in kind, and notice was accordingly given that on December 10th, a holocaust would be made of the bull and of the papal decretals. On the appointed day the magistrates and citizens of Wittemberg, and the students of the University, then numbering over five hundred youths, assembled at the designated spot, near the poorhouse. Learned professors built the pile and lighted it, when Luther solemnly cast into the flames the books of canon law and the bull of excommunication. As the latter left his hand he exclaimed—"For that thou hast persecuted the holy of the Lord, so may the quenchless fire persecute thee!" The sacred missive of the Vicegerent of God disappeared in the flames; the spectators gazed earnestly at this bold defiance of all the powers of heaven and earth, and when the fateful ceremony was over, Luther was escorted to his cell by the magistrates of the town and the doctors of the University.[2] He had burnt his ships, and retreat was henceforth impossible.

Vainly might the church invoke the warning example of Dathan and Abiram. The earth opened not to hide the perpetrators of the sacrilege; and Luther, with the ominous words: "This is the beginning of the tragedy. Hitherto I have only

[1] M. Lutheri Opp. T. II. fol. 286-7, 289 *a*, 292 *a*.

[2] Ibid. T. II. fol. 320 *a*.

played and jested with the pope," published a manifesto justifying the auto-de-fe by thirty propositions drawn from the books of the canon law, which he declared to be damnable and fit only for the flames.[1] That the papalists should regard the act as the climax of Luther's wickedness was but natural, and even the constitutional phlegm of Adrian VI. described it as "that incredible madness of that outlaw, that contemner and violator of all law, who dared to commit to the flames the most holy decretals of the popes and the canons of the church."[2]

Yet the effect of all this was greatly to abate the tone of papal supremacy, and to encourage the reformers in despising the once dreaded censures. When in 1521 the first rupture took place between Francis I. and Charles V., and an excommunication was threatened against the former by Leo X., the only comment made at the court of the Elector Frederic was, "O foolish king, if he fears such trifles!"[3] The popes felt this, and lowered their peremptory tone. For four years Frederic of Saxony had been the protector of Luther, without formally separating himself from the Catholic church or withdrawing his obedience from Rome. He was solely responsible for the melancholy fact that Luther had not long before perished at the stake of John Huss and Jerome of Prague; yet in 1522 Adrian VI., in addressing him a long epistle complaining of Luther, does not dare to remind him that under the bull of Leo X. he and all his friends are excommunicate, outlawed, and deprived of lordships and possessions. On the contrary, he is the pope's dearest son, from whom the church still hopes obedience and assistance; and only vague warnings are thrown out of the fate of Dathan and Abiram, and only general intimations that, if he continues his protection of heretics, he cannot expect to escape punishment in this world and the next. So, at the close of the next year, December 7th, 1523, Adrian's successor, Clement VII., still addresses the obstinate prince as

[1] Lutheri Opp. T. II. fol. 319 *b*.

[2] Adriani PP. VI. Breve ad Frideric. (Hartzheim VI. 192).

[3] Spalatin. Annal. ann. 1521.

his well-beloved son, in the most friendly strain.[1] Equally significant is a pastoral epistle of January 20th, 1524, addressed by the Bishop of Ermeland to his flock. To withstand the alarming progress of Lutheranism he deals liberally in imprecations and curses, devoting all backsliders to eternal malediction, but he indulges in no threats of the temporal penalties which had so long served to give a keener edge to the sword of the spirit.[2] In Northern Germany, at least, the time for such manifestations had passed.

In the heat of controversy Luther might deny the power of excommunication, but when he excommunicated the pope he only showed, by unconscious example, that some power of the kind must be lodged in every organized church; and this was recognized when the Protestants, after completing the work of destruction, commenced that of reconstruction. Every body of men must have the right to determine their conditions of fellowship, and the power of expulsion from their association must be lodged somewhere, to be used with such moderation and discretion as God may vouchsafe to them. This was manifested when the Lutherans came to draw up a formal declaration of faith and discipline in the Augsburg Confession —though it should be borne in mind that this document was framed in the hope that it might lead to a reconciliation of the churches, and that it therefore conceded as much as possible to the Catholic views, while its adoption as the recognized standard of German orthodoxy arrested the development of the reform.

The relations between church and state, and the limits of the sacerdotal power as expressed in the Augsburg Confession, are the natural results of Luther's doctrines on the sacrament of ordination quoted above. The old abuses of the episcopal power, infringing on the secular authority, are warmly denounced. The province of the church is to preach the gospel

[1] Hartzheim. VI. 192.—Lutheri Opp. T. II. fol. 571 *a*.

[2] Lutheri Opp. T. III. fol. 63 *b*.

and administer the sacraments, not to dethrone kings, usurp temporal power, or interfere with the laws of the land. Church and state have each its own sphere, and if the ministers of the church have at any time exercised authority, its source has not been divine law, but the pleasure of the secular potentate. To this is to be attributed the supervision of the bishops over marriage and tithes, with the necessary corollary that what has been given may be withdrawn. Their only independent jurisdiction is found in the remission of sins, and in examining questions of faith. They are to condemn all doctrine at variance with Scripture, and to exclude from communion those whose impiety is notorious; but this must be done by the word alone, without recourse to the arm of flesh. At the same time the right of private judgment is reserved to the churches, which have the command of God to refuse obedience to anything contrary to the gospel.[1] Melanchthon, in his apology for the Augsburg Confession, explains this by saying that to the bishops belongs the ministry of the word and of the sacraments, with the power of excommunicating those convicted of crime, and of absolving them if truly contrite; but they have no power over the law, and must exercise their jurisdiction according to the word of God.[2]

In 1597, after the Lutherans had had time to perfect their organization, we find an authoritative exposition of their doctrine on this subject. The ban of the church was not to be employed indiscriminately against all sinners and for all offences, but only against public and notorious delinquents, who scandalized the church, corrupted others by their example, and caused the name of God to be blasphemed; and also those who after repeated monitions refused to undergo penitence and to reform their evil lives. In such cases, according to the command of Christ, a sentence of public excommunication was to be rendered, ejecting the offender from the church, and he was to be threatened with the wrath of God and eternal dam-

[1] Confess. Augustan. P. II. art. 7.

[2] Melanchth. Apol. (Lutheri Opp. T. IV. fol. 266 *b*).

nation for his obdurate refusal to obtain by repentance the remission of his sins.[1]

There was in this all the elements of a new sacerdotal domination, especially as in principle the princes and rulers of the land were as liable as the humblest peasant to the infliction of the censure. By the necessity of the case, however, as well as by the doctrines of Luther and of the Augsburg Confession, while the state was independent of the church, the church was dependent on the state, and the German sovereigns were not likely to subject themselves to a new ecclesiastical tyranny similar to the one which they had had so much difficulty in throwing off. The Thirty Years' War, moreover, while it stopped the extension of Protestantism, was not calculated to raise the influence of the spiritual arm. Excommunication, therefore, became less and less usual as a resort, and towards the opening of the eighteenth century some godless men were found who openly advocated its abandonment, to the great indignation of the stricter members of the church.[2]

Theoretically the Lutheran church thus retained the machinery of excommunication, but with the advance of enlightenment and the more regular administration of law, its employment naturally became rarer. A writer of the eighteenth century alludes to the minor excommunication, or suspension from the Eucharist, as a remedy occasionally employed; but the major excommunication, which deprived the culprit of all connection with the church except as an auditor, rendered him incapable of acting as sponsor, and excluded him from Christian burial, though recognized by canon lawyers as still existing, was practically obsolete. Only some special occasion, and the consent of the government, could justify proceeding to so severe a penalty.[3]

[1] Joann. Fechtius, de Excom. Eccles. p. 13 (Rostochii, 1712).

[2] Fecht's work, just cited, is a long and dreary polemical discourse of four hundred quarto pages directed against these Indifferentists or liberals. He deplores greatly the growing obsolescence of the censure.

[3] Willenbergii Tract. de Excess. et Pœn. Cleric. Jenæ, 1740, pp. 46–7.

The Calvinistic theology, with its views of election and regeneration, and the direct relation which it established between the believer and the Creator, would seem to render excommunication utterly illogical as a punishment to be inflicted by the church.[1] Calvin's Confession of Faith carefully excludes all human devices intended to bind the conscience; it reduces the sacraments to two, and professes implicit obedience to the secular power, even if that power be infidel; but excommunication it recognizes as instituted by Christ, "which we do very well approve and acknowledge the necessity thereof and of its appendages."[2] Calvin's treatment of Servetus, indeed, shows either that he was unwilling to leave the heretic and blasphemer to the vengeance of an offended God, or that he was quite willing to regard the minister of Christ as the chosen instrument of that vengeance. In either case, predestination and reprobation fared badly.

Among the Huguenots, therefore, excommunication was an established portion of church discipline; but as their churches were for the most part persecuted, or, at the best, were barely tolerated, there was of course no scope for the temporal extension of spiritual penalties. Even within the church, the infliction of excommunication was limited with restrictions carefully devised to prevent abuse. The second council of Paris, in 1565, drew up a series of regulations with regard to it which became the established rule of the church, and were included in its final code of discipline. An offence committed in private was visited with a brotherly admonition. If this was disregarded, or if the offence was notorious, then the culprit could be punished by suspension from communion, but the pastor was not empowered to decree it upon his own authority.

—Only thirty years previous, in the time of Fecht, the minor excommunication involved exclusion from sponsorship and deprivation of Christian sepulture (Op. cit. p. 2).

[1] Calvin's Confession of Faith, adopted by the churches of France in 1559, Arts. xvii. xix. xxi. xxii. (Quick, Synodicon in Gall. Reform. I. pp. xl. xl.).

[2] Ibid. Arts. xxxiii. xxxv. xxxvi. (Quick, I. xiii.–xv.).

The consistory alone was competent, and careful investigation was required to precede the sentence. Still tender of the feelings and reputation of the culprit, only in notorious crimes was the sentence made known to the congregation, and restoration to communion could at any time be obtained by confession and repentance. If the offender continued obdurate and impenitent, however, then at length excommunication could be resorted to: "But, inasmuch as this is the last and most rigorous of all remedies, it shall never be used but in case of extremity, when all fair and gentle means have proved ineffectual." If, after repeatedly striving with his contumacious spirit, the culprit was still found hardened in guilt, the pastor, on a Sunday, announced the impending anathema to the congregation, preaching a sermon on the terrors of expulsion from the church, and begging the prayers of the faithful for the obstinate sinner, whose name was still kept concealed. If these prayers and the warning proved alike unavailing, then on two successive Sundays the same was repeated, with the announcement of the name of the offender. At last, on the fourth Sunday, the pastor, in the name and with the consent of the whole church, declared him excommunicate and cut off, as a rotten member, from the ecclesiastical body; he was thenceforth deprived of all spiritual privileges, and the faithful were exhorted not to frequent his company or to converse familiarly with him. If the excommunicate repented and applied for readmission, and if on examination by the consistory he showed fruits of repentance, the pastor announced the glad tidings to the congregation; the sinner appeared before them, publicly confessed his transgressions, and asked pardon of God and the church, when he was received back with joy and thanksgiving.[1]

In the final code of discipline, the consistories were directed to use great discretion and deliberation in awarding either suspension or excommunication. Suspension was not to be made public, except in the case of heretics, despisers of God,

[1] Second Council of Paris, ann. 1565 can. 2 (Quick, I. 57–8).

rebels against the consistory, traitors, those convicted of public crimes involving corporal punishment, those married by Catholic priests, or who allowed their children to be baptized in the Roman church or to marry Romanists. When an excommunication was impending, the pastor was directed, in his weekly exhortations, to entreat the congregation to pray and use all means to urge the offender to repentance, so as to avert the dreadful anathema "unto which we cannot proceed without a world of regret and grief."[1]

While in this there is to be recognized and honored the sincere desire to deal moderately and humanely with offenders, and to preclude as far as possible the abuse of the penalty for the gratification of private vindictiveness, it is evident that there was also a purpose to heighten in the minds of the faithful the impression of the awful nature of the penalty. Indeed, it is curious to observe that, notwithstanding the purely human character of the Calvinist priesthood, when they spoke in the name of the church they assumed the power of regulating the salvation of the wicked as fully as Innocent III., and of delivering him over to Satan with as much certainty as the Apostle Paul. This assumption of the powers of God is complete in the form of excommunication adopted by the synod of Alez, in 1620, and embodied as the authorized formula in the Code of Discipline. After reciting the repeated warnings and the hardened impenitence of the sinner, it proceeds—

"Wherefore, we ministers of the Word and Gospel of our Lord Jesus Christ, whom God hath armed with spiritual weapons, mighty through God to throw down the strongholds which do oppose themselves against Him; to whom the Eternal Son of God hath given the power of binding and loosing upon earth, declaring that what we shall bind on earth shall be bound in Heaven, and being willing thoroughly to purge the House of God, and to free His church of scandal, and by pronouncing anathema against the wicked one to glorify the name of our God; In the name and by the authority of our Lord Jesus, by the advice and authority of the pastors and

[1] Cod. Discip. chap. v. can. xv.–xvii. (Quick, I. pp. xxxi.–ii.).

elders assembled in colloquy, and of the consistory of this church, we have cut off and do cut off the said N. N from the communion of the church of God. We do excommunicate and deprive him of the fellowship of saints, so that he may be unto you as a pagan or publican, and that among true believers he may be an anathema and execration. Let his company be reputed contagious! and let his example possess your souls with astonishment, and cause you to tremble under the mighty hand of God! And this sentence the Son of God will ratify and make effectual, until such time as the sinner, being confounded and abased before God, shall glorify Him by his conversion. . . . If any man love not the Lord Jesus Christ let him be anathema maranatha! Amen!"[1]

Those who in persecution could thus arrogate to themselves the right to speak for God, and could assume that their acts were His, lacked only the opportunity to become as tyrannical and domineering as the Latin church in its worst days. Honestly, but fiercely, fanatical, they were troubled with as few doubts or misgivings as Damiani or Torquemada, and in a few generations of unresisted domination their simple form of belief would have resulted in a theocracy as absolute as that which Hildebrand founded. The rapidity of this inevitable development was manifested in Scotland, as soon as the Catholic cause was fairly subdued. John Knox was consistent when, during his residence in England he refused, in 1552, the parish of Allhallows in London offered to him by Cranmer, and, on being summoned before the King's Council to explain his declination of the preferment, he gave as one of his reasons that no ministers in England had authority to separate the Lepers from the Heal, which was a chief point in his office.[2] In the English establishment the power of excommunication was not confided to the hands of simple pastors and congregations but formed part of the machinery of ecclesiastical courts, and Knox would not submit to be shorn of the prerogatives which he deemed essential to the office of the ministry. In Scotland he had full opportunity to mould the kirk according to the Cal-

[1] Cod. Discip. chap. v. can. xvii. (Quick, I. xxxii.-iii.).

[2] Strype's Eccles. Memorials, II. 399.

vinist theories, and the results were not long in becoming apparent.[1] The consistories of Calvin, composed of the pastor with his deacons and elders, became the kirk-sessions, which were virtually the rulers of the land, and which maintained their power for generations against the assaults of papist and prelatist on the single basis of excommunication. A contemporary has sketched these assemblies and their domination in no friendly spirit: "Every parish had a tyrant who made the greatest lord in his district stoop to his authority. The kirk was the place where he kept his court; the pulpit his throne or tribunal from which he issued out his terrible decrees; and twelve or fourteen sour, ignorant enthusiasts, under the title of elders, composed his council. If any, of what quality soever, had the assurance to disobey his orders, the dreadful sentence of excommunication was immediately thundered out against him, his goods and chattels confiscated and seized, and he himself being looked upon as actually in the possession of the devil, and irretrievably doomed to eternal perdition, all that convened with him were in no better esteem."[2] Another contemporary, Sir Andrew Weldon, an English traveller who visited Scotland in the early part of the seventeenth century, pithily describes the spirit with which this rule was administered: "Their Sabbath exercises are a preaching in the morning and a persecuting in the afternoon."[3]

This sounds like exaggeration, yet, making allowance for its hostile tone, it gives a reasonably truthful picture of the Scottish theocracy. While in many respects the kirk-sessions formed an admirable police system, yet their petty and all-pervading tyranny must have been inexpressibly galling and odious. All kinds of offenders were brought before them, and though they transferred to the criminal tribunals such crimes as theft or murder, yet their jurisdiction seems to have been practically limited only by their own discretion. Criminal

[1] See Knox's First Book of Discipline, chap. IX.

[2] Memoirs of Lochiell (Spottiswoode Miscellany, II. 229–30).

[3] Rogers's Scotland, Social and Domestic, p. 28 (Grampian Club, 1869).

judges who did not administer justice to their satisfaction, were promptly summoned to trial. The private relations of families, the vices or the evil disposition of the individual were alike subject to their inquisition and judgment. Their decrees were virtually irreversible and without appeal, and behind all lay the awful power of excommunication, which seemed to reduce the most hardened to submission. Indeed, they even assumed legislative as well as judicial functions, and local presbyteries would pass general laws punishing such offences as adultery with temporal penalties.[1] Rome herself scarcely dared to organize a system of despotism so minute and so complete; and however disinterested and ardent in the faith may have been the men who built it up and administered it, human nature, even in the elect, is too imperfect for us to imagine that such a theocracy could exercise its power without causing infinite misery. There was probably less corruption than under the Spanish Inquisition, but it may be doubted which rule of the two was the more easy to be endured. Numerous extracts have been printed from the registers, still existing, of many kirk-sessions, which afford us an insight into some of the practical workings of the system, showing that the procedures established in the French churches were faithfully observed, and that the cumbrous process designed to limit the use of the spiritual sword proved of little avail among those who were unanimously ready to exercise their brief authority.

Thus in the Kirk-Sessions Register of Perth, published by the Spottiswoode Society, we find under date of June 29th, 1575: "The whilk day Mr. John Row, minister of Perth, denounced Elspeth Carnock excommunicate, in presence of the whole people, for subtracting herself from her repentance."

[1] Thus, in 1586, the kirk-sessions of Glasgow ordained that adulterers should "satisfy six Sabbaths in the pillory," bare-legged and in sackcloth, and then be carted through the town—*i. e.*, be whipped at the cart's tail. The same body, in 1643, decreed that the same offence be punished with standing three hours in the "jaggs," a public whipping, imprisonment in the jail, and banishment from the town.—Rogers, op. cit. p. 364.

A few months later a certain Thomas Dundie and his wife had a quarrel. The sessions took up the matter, adjudged Thomas to be in fault, and ordered the three admonitions or warnings to be given him. He apparently held out until the third warning, for after that there is no further notice of him. Then there is a case of assault and battery of which the sessions takes cognizance, ordering the bailies to keep the parties in custody until they perform the award, under pain of excommunication, for the bailies were formally commanded "to assist the ordinances of the kirk and actis of parliament anentis the pvnishment of excommunicate persones," and therefore were bound to execute the spiritual decrees as completely as in Germany under the Schwabenspiegel. Indeed, soon after this we find the bailies themselves threatened with excommunication within a fortnight for lukewarmness in executing the judgments of the sessions; all future bailies were included in the threat, and the existing ones wisely made their peace and escaped the anathema by prompt submission. This power over the secular magistrates was manifested again a few years later, when the bailies were ordered, under pain of excommunication, to imprison a certain Thomas Taylor, who had neglected the admonition of the sessions; the proceeding was successful, and the obdurate Thomas was brought before the kirk and forced to perform due penance. Thus the terrors of the spiritual and criminal law combined were wielded by the church, and were brought to bear upon the most trivial cases as well as upon the most hardened offenders.[1]

The kirk-sessions moreover were the principal promoters of the fearful prosecutions for witchcraft, which perhaps were worse in Scotland than in any other country. They paid the "prickers" who tortured miserable old women to obtain proof, and they voted supplies of firewood for the resultant *auto-de-fe*. While they rigorously prohibited funerals and marriages on

[1] Spottiswoode Miscellany, II. 235, 236, 241, 249–50, 268.—Extracts from the Records of the Burgh of Peebles, p. 336 (Burgh Records Society).

the Sabbath as a profanation of the sacredness of the day, witch-burnings were deemed a good work allowable on the Lord's day, and committees of ministers attended them officially. Zealous ministers, indeed, sometimes did not content themselves with simply directing these proceedings. In 1650, Mr. John Aird, minister of Stow, reported to his kirk-session his success in personally convicting a witch by pricking her, having triumphantly thrust into her shoulder a pin up to the head.[1] From this supreme crime down to the pettiest offence, there was nothing that did not come within their jurisdiction. They regulated the proceedings at weddings, they prosecuted pipers and fiddlers for performing at them, prescribed the number of guests to be invited, and the quantity of liquor to be drunk; and when the feast was provided by a publican, they limited the amount of money to be spent. If the quaint carvings on an old tomb displeased them, they speedily caused its remodelling, as in the case of Lord Boyd, whom the Presbytery of Irvine, in 1649, ordered to remove an image from the sepulchre of his ancestors, under pain of excommunication, and he incontinently had to obey. If a youth chanced to pass his father without lifting his bonnet, the apparent disrespect was made the subject of grave deliberations, as occurred in the Presbytery of Glasgow in 1598. The same body forbade the marriage of James Armour to Helen Bar, because the bridegroom was in debt; and it threatened an unfortunate piper with excommunication if he did not discontinue playing on his pipes on Sunday. The kirk-sessions of Stirling, in 1598, ordered the imprisonment, on bread and water, of two persons who had played at dice, and the sessions of Dumfries fined a man in twelve shillings who had been found card-playing. The sessions of the Port of Menteith, in 1668, prosecuted three persons who had drunk a "chapon" of ale on Sunday, and sentenced them "to sit bair headit beffore the pulpit, and after sermon to acknowledge their scandal on their knees."

[1] Rogers, op. cit. pp. 29, 270, 328.

Perhaps, however, the most capricious exercise of petty tyranny was in the case of William Howatson, who, on May 6, 1652, was ordered by the kirk-sessions of Stow to "humble himself before the session and crave God's mercy," because, on the preceding Sunday, he had walked a short distance to visit his sick mother.[1]

No one could escape the searching inquisition of the system. In 1650 the synod of Fife ordered every parish to be divided up among the elders, and in obedience to the act of the General Assembly in 1649, each elder was to traverse his district carefully at least once a month, and report to his sessions all cases of disorders or offences which might come within his knowledge.[2] To supplement this minute perquisition there were the regulations which prescribed to all constant attendance in church on Sunday, and partaking of communion at stated intervals. Thus as early as 1568 the kirk-sessions of Aberdeen imposed a fine of sixpence on all absentees from divine service, and of two shillings on elders and deacons. The sessions of Anstruther, Kilrenny, and Pittenweem commanded the presence of every one, morning and afternoon, with an ascending scale of penalties, being twelvepence for the first offence, two shillings for the second, and five shillings for the third and all after. In 1570 the sessions of St. Andrews decided to withdraw alms from all paupers who did not present themselves regularly at sermon time; and at Lasswade, in 1615, a fine was levied of twenty pence Scots on servants, three shillings and fourpence on yeomen, and six shillings and eightpence on gentlemen. To insure the observance of these regulations a minute system of supervision was organized. In 1583 the kirk-sessions of Perth ordered each elder to go around his district every Sunday forenoon and note all absentees, so as to levy on them the fine of twenty shillings; and in 1600 the sessions of Glasgow decreed that the deacons of the several

[1] Rogers, op. cit. pp. 18, 115, 340, 343, 357, 367, 371.
[2] Ibid. p. 374.

crafts should search among families of their freemen for absentees, and report them for fining.[1]

It was the same with respect to attendance at the Lord's Supper. In 1600 the Scottish Parliament passed an act ordering every adult to partake of communion at least twice a year, under penalties graduated according to the station of the delinquent. Thus for an earl the mulct was £1000 Scots; for a lord, 1000 merks; for a baron or land owner, 300 merks; for a yeoman, £40; and a record of Aberdeen, in 1603, shows that the enforcement of this law was in the hands of the kirk-sessions, and that the fines were not only collected by legal process, but were increased at the pleasure of the sessions.[2] Even in the eighteenth century, absence from the kirk for three consecutive Sabbaths without a proper excuse, leaving church during the services, or being present at communion without partaking of it, were all offences which entailed the censures of the church.[3] It evidently was not easy for the carnal-minded to escape the watchful supervision of the sessions.

No matter how trivial the offence, it became as of old a crime of the deepest dye if there was any slackness of obedience in submitting to the commands of the sessions. Any one who failed to answer when summoned was at once proceeded against with the three premonitory warnings,[4] and no rank or station excused the offender. Thus in 1612 the Marquis of Huntley and the Earl of Errol were excommunicated by the synod of Fife for not communicating; and on January 7th, 1647, the Presbytery of Lismahago convicted the Duke of Hamilton of not being faithful to the covenant, and compelled him to acknowlege his offence upon his knees and to make full

[1] Rogers, op. cit. pp. 345, 347.

[2] Ibid. pp. 24, 346. The pound Scots was one-twelfth of the pound sterling; the merk was half a pound.

[3] Lauder's Ancient Bishops Considered, chap. VIII. Nos. 22, 26, 27, 46 (Edinburgh, 1707).

[4] Spottiswoode Miscell. I. 251, 292–5.

confession publicly in church.[1] So in 1638 John Guthrie, Bishop of Moray, was excommunicated by the Glasgow assembly because he had refused to perform penance in Edinburgh for having preached before Charles I. in a surplice.[2]

The segregation of the excommunicate was strictly enforced. "After which sentence may no person—his wife and family only excepted—have any kind of conversation with him, be it in eating or drinking, buying and selling, yea, in saluting or talking with him; except it be at commandment or license of the ministry for his conversion: that he, by such means confounded, seeing himself abhorred of the godly and faithful, may have occasion to repent and so be saved. The sentence of excommunication must be published universally throughout the realm, lest that any man should pretend ignorance."[3] These regulations were not mere idle formulas. Cases are frequently mentioned of proceedings taken against those who frequented with, harbored, or even spoke to the recalcitrant wretches who were under the ban of the kirk. From 1621 to 1645 John Robertson was minister of Perth, but notwithstanding this long and faithful service he was deposed in 1645 by the General Assembly for conversing with Montrose, who was then under excommunication, and though he was readmitted in 1654 he was not restored to his post.[4] So great was the dread of holding any relations with a person thus anathematized, that when, in 1611, John Spottiswoode of that ilk killed in a quarrel his friend Matthew Sinclair of Longformacus, and the Privy Council, by command of King James, intervened to pacify the feud, the brothers of the murdered man, in responding to certain offers made by Spottiswoode, felt obliged to place on record a protest to justify themselves for receiving and reading any communications from an excommunicated man. "First, we protest that we recaued thame be commandiement of your moist hounourable Lordschippis sua that na imputatioun justlie

[1] Rogers, op. cit. pp. 314–17.
[2] Spottiswoode Miscell. I. 201.
[3] Knox's First Book of Discipline, chap. IX. § 9.
[4] Spottiswoode Miscellany, II. 253, 273–4, 275, 312.

may be attributed to ws for vewing and reiding thairof, proceeding from his Maiestie's rebell and ane excommunicat persone, and sua Godis and his Maiestie's enemye."[1] So, when Lord Herries was excommunicated by the Provincial Synod in 1647, two tradesmen who had business with him were obliged to apply to the kirk-sessions of Dumfries for permission to visit him before they could venture to hold converse with him.[2]

Even the children of the excommunicate were in some sort involved in the penalty of the parent. Those who were born during his severance from the church were not admitted to baptism until they were of age to apply for it themselves, unless their mother or some near friend would present them, together with a declaration of abhorrence and condemnation of the obstinacy of the impenitent father.[3]

Strange as it may seem, however, the spiritual terrors of the anathema were more effective than its temporal penalties, and men of the most hardened natures, who derided the law, or had nothing further to expect from it, were brought to subjection by the unknown and awful consequences of separation from the church. Thus, in the Kirk-Sessions Register of Perth, under date of November 20th, 1598, there is an entry showing that Thomas Law, a desperate rebel who had broken jail and had long defied the civil magistracy, appeared before the sessions and begged an abandonment of the proceedings for the excommunication which he had deserved, offering to render whatever satisfaction might be desired by both the bailies and the sessions.[4] Equally significant of the immense influence over men's minds of this fearful sentence is an incident which occurred at the execution, in 1646, at St. Andrews, of three royalists, serving under Montrose, and taken prisoners at Philiphaugh, after promise of quarter. One of them, Major Nathaniel Gordon, is described in Lochiell's Memoirs as a

[1] Spottiswoode Miscell. I. 27.
[2] Rogers, op. cit. p. 375.
[3] Knox's First Book of Discipline, chap. IX. § 10.
[4] Spottiswoode Miscell. II. 277.

gentleman "of great courage and fortitude," yet on the day of his execution, when there was no further hope of reprieve or pardon, he pleaded earnestly for reconciliation to the church, in a written declaration, expressing his sorrow "for taking up arms and shedding much innocent blood in this wicked rebellion against this church and kingdom, for which I was justly excommunicated by the kirk; I do therefore humbly beg pardon and mercy from God for the same, thorough and for the merits of Christ his sonne, desiring earnestly to be relaxed from that fearful sentence of excommunication."[1] The request was granted, and he made a most edifying end.

It required, indeed, the combination of temporal and spiritual terrors attendant upon the alternative of excommunication to compel subjection to the sentences of penance inflicted upon every trivial occasion. This penance was no light punishment in itself, and was skilfully graduated to suit every species of crime and to serve as a supplement to the ordinary penal laws. Every kirk had its stool of repentance on which the penitent was obliged to face the congregation bareheaded while the painful minister drew from his shame lessons of edification for the faithful. Some churches had not only a stool but a pillar, on which hardened offenders were raised to a bad eminence for the benefit of the spectators; and all parishes were required to possess a "harden-gown" or "linnens," a coarse sackcloth cloak in which the penitent was enveloped. Even as late as 1693 an entry in the sessions register of Kirkmichael records the making of one of these garments. The character of the penitence ordinarily enjoined may be learned from the sentences rendered in several cases of adultery recorded. Thus the kirk-sessions of Dumfries orders two culprits to sit in sackcloth seven Sundays on the stool and to stand barefoot at the church door on the first and last days. At Aberdeen, in 1568, the offenders were required to stand bare-legged and in sackcloth for three Sundays at the church

[1] Spottiswoode Miscell. I. 205–6.

door wearing paper crowns on which their crime was inscribed; when the preacher began his sermon they were to come to the stool of repentance, and, when service was over, to return to the church door until the congregation had dispersed. In 1642, the Presbytery of Lanark punished them by compelling them to go through all the kirks of the district and stand bare-legged at the door, from the second bell until the last.[1]

This ingenious cumulation of shame and disgrace, however, frequently was considered insufficient, and it was supplemented by physical torments better fitted to subdue those who had become hardened—perhaps by undergoing repeated exhibitions on the stool or pillar. One implement of torture was called the *branks*—a sort of helmet composed of iron bars, secured upon the head with a padlock, and furnished with a triangular projection which entered the mouth of the patient. This was particularly provided for scolds and slanderers, whose penance on the stool of repentance was rendered more unendurable by its application. The kirk-sessions of St. Andrews ordered it for Isobel Lindsay when she was convicted of slandering Archbishop Sharpe; and the sessions register of Dunfermline, March 5th, 1648, records a similar sentence passed on Margaret Nicholsone for scolding and drunkenness.

A still more effective means of torment was found in the *jaggs* or *jougs* (*jugum*), an iron collar which was locked around the neck of the penitent and secured to the wall near the church door at a height to render the attitude of confinement painful. Sometimes the length of punishment was only an hour, but it was repeated in aggravated cases, some stubborn offenders being jagged every Sunday for six months. Sometimes the application was prolonged. In 1570 the kirk-sessions of St. Andrews warned Gelis Symson that she should be jagged for twenty-four hours if she did not reform her habits of scolding and Sabbath-breaking. Nor was this severity of punishment at all unlikely, when in 1606 we see the kirk-

[1] Rogers, op. cit. pp. 353, 364–6.

sessions of Ayr inflict the jaggs and pillar of repentance on John M'Crie for saying that "no bodie had the wyte (blame) of the poore folks but the devill and the priest."[1]

This severity of discipline continued until the Scottish Parliament in 1690 abolished the civil penalties of excommunication.[2] A fatal blow then was struck at the temporal usurpations of the kirk, and the abuses which had flourished so luxuriantly commenced rapidly to decline. Yet the spirit which dictated them has by no means ceased to exist, as is shown in the case of Mr. Heber Donaldson, suspended from communion in 1881 by the church-sessions of Emlenton, Penna., for the offence of having danced on two occasions. Mr. Donaldson complained that he was summarily summoned to trial without any previous warning, and that the sessions refused to listen to his proof that dancing is not an infraction of the law of God. His appeals to the Presbytery of Clarion and then to the Synod of Erie were both unsuccessful, when he carried the case up to the General Assembly, which threw it out on the ground that from its inception it had been tried in a wrong manner. The Emlenton church then took it up again and again condemned Mr. Donaldson who, wearied with the contest, abandoned the communion into which he had been born.

The Anglican church inherited its discipline from Rome more directly then any other of the Protestant denominations, and its relations with our subject are therefore easily comprehended. When Henry VIII. threw off his spiritual allegiance to Clement VII., his object was to create a schism, not a heresy, and simply to supplant the tiara by the crown. Assuming to himself the supreme authority wielded by the pope, it formed no part of his plan to diminish that authority in any respect, and the power of excommunication was too precious an addition to the royal prerogative to be abandoned or even weakened. Transsubstantiation, private masses, and the sacra-

[1] Rogers, op. cit. pp. 354–61. [2] Ibid. p. 376.

ment of penitence were retained,[1] which were quite sufficient for that purpose; and though Henry did not presume to officiate as high-priest himself, his control of those who did so placed the salvation of his subjects as completely in his hands as it had ever been in those of Innocent III. or Boniface VIII. With the simplification of dogma under Edward VI. this spiritual autocracy disappeared, but excommunication was retained as a convenient weapon, and as its superhuman terrors were abated, the temporal pains and penalties attaching to it under the ancient law were carefully preserved and strengthened. In the projected body of ecclesiastical law, laboriously prepared in 1552, but which failed of publication owing to the death of Edward, the subject of excommunication received careful consideration. To prevent its abuse the ecclesiastical judge pronouncing it was required to associate with him a justice of the peace, the minister of the parish of the offender, and two or three learned presbyters, with whose assent the sentence was to be rendered in writing. When thus pronounced, however, the excommunicate was to be cut off from all human intercourse except that of his own family, and any one eating, drinking, or consorting with him were similarly excommunicated. Unrepentance under censure for forty days entailed a chancery writ throwing the offender into prison, where he lay until he made submission. Reconciliation was a public ceremony performed in church in the face of the congregation with details not a little humiliating to the penitent.[2]

This was the ideal of church discipline for the reformers of those days, and its principles may be traced in the standard of Anglican orthodoxy. The forty-two articles promulgated in 1552, and the thirty-nine articles of Elizabeth, alike enjoin

[1] Burnet's Collections, I. 305. The more advanced reformers denied the power of bishops and ecclesiastical judges to inflict excommunication —a heresy included in the list of grievances complained of by the convocation of 1536.—Protestation of the Clergie No. 33 (Strype's Eccles. Memorials, I. Append. p. 177).

[2] Burnet's Reformation, II. 201 (Ed. 1683).

the treatment as a heathen and a publican of any excommunicate.[1] But this was insufficient. In 1562 the bishops in convocation complained of the negligence of the sheriffs in imprisoning excommunicates "whereby the censures and corrections of the church do run in great contempt; and like daily to grow into more, unless some speedy remedy be found in that behalf."[2] What was the disposition of the more ardent churchmen in this respect may be gathered from a MS., printed by Strype, of propositions to be laid before convocation, annotations on which in Archbishop Parker's hand show it to be authoritative. It proposed that those who do not communicate at least thrice a year be severely punished, while persons not communicating at all, and excommunicates remaining unreconciled for six months, be dealt with as heretics.[3] Another liberal proposition made in the same convocation was that any one notably neglecting to attend divine service or to take communion should be held as excommunicate without further process or promulgation of sentence, and that during his continuance therein he be deprived of all benefit of law, having no standing in court except as defendant.[4]

The complaints of the bishops were not unheeded. The writ *de excommunicato capiendo* imprisoned without bail any one remaining under excommunication for forty days, and a statute to insure its execution and to correct the negligence of the sheriffs was passed without delay. These writs were made returnable to the Court of Queen's Bench, which was empowered to fine at discretion any sheriff negligent in the premises. If the party excommunicated did not surrender himself a second writ was issued, failure to obey which within six days was visited with a fine of £10. A third writ then was issued, carrying with it a fine of £20; and as long as the offender was contumacious, an infinity of these writs followed each other, each bearing its separate fine of like amount, thus rendering

[1] Burnet's Collections, II. 217. [2] Strype's Annals, I. 272, 310.
[3] Ibid. additions to Vol I. p. 13 in Vol. II. ad calcem.
[4] Ibid. I. 316–7. Cf. Strype's Grindal. App. p. 11.

persistent obduracy a luxury too expensive even for the most wealthy.[1]

This law enumerates the offences entailing excommunication —as heresy, refusing to allow a child to be baptized, declining to receive communion after the orthodox form, negligence in attending divine service, dissidence in belief, incontinence, simony, usury, perjury in ecclesiastical courts, and idolatry. This was a tolerably wide and comprehensive field for censure-mongers, yet its limitations were by no means strictly observed. We have seen elsewhere the abuses arising from the subjugation of the state to the church, and the yet more anomalous Anglican theory of using the church as a department of the state was fruitful of the same troubles. When Queen Elizabeth, urged by the antiquarian tastes of Archbishop Parker, desired to put a stop to the iconoclastic tendencies of the people in defacing monuments in the churches, breaking stained windows, and stealing the bells and lead, she not only very properly forbade it for the future, but she ordered an inquisition into the injuries done since the commencement of her reign, and required that they be made good under pain of excommunication—and this not by act of Parliament, but by royal proclamation of Sept. 19, 1559.[2] Moreover, while the bishops in the convocation of 1562 were bemoaning the slackness of the sheriffs in incarcerating unlucky excommunicates, a canonist of undoubted orthodoxy, Ralph Lever, presented to the queen a memorial complaining of the abuses practised by bishops and their officials in excommunicating without cause, and in defiance of both canon and statute law.[3] The temper of the times was against him, however, and we have seen how parliament yielded to the demands of the bishops, while the attempted limitation of the subjects for censure speedily became a dead letter.

[1] 5 Eliz. ch. 23 (Statutes at Large, II. 563–5). Cf. Blount's Nomo-Lexicon, s. v.

[2] Strype's Annals, I. 185.

[3] Ibid. p. 321.

The act of 1562, in fact, was not adapted to diminish current abuses. They grew and flourished, rendering the people discontented, and bringing the church into disrepute. That the rising sect of puritans should protest and argue that such censures were without foundation in either the Old or New Testament,[1] was natural enough, since they were the principal sufferers by the spiritual sword thus wielded by the secular arm; but a more cogent evidence of the existing evils is furnished by the convocation of 1580, when the House of Bishops earnestly asked the lower house to frame some measure whereby the scandals that rendered the very name of ecclesiastical censures odious to the people might be removed. That it was only the name and not the reality of the penalty that they desired to change is evident from a paper laid before the body, attributed by Strype to Archbishop Grindal, in which, after alluding to the extension of excommunication to petty offences in violation of ancient custom, it is suggested that, except in cases of heinous crime, the decree of excommunication shall be altered to a decree of contumacy, this contumacy carrying with it all the legal penalties and disabilities of excommunication, except deprivation of the sacrament, and segregation from the society of the faithful.[2] This ingenious proposition was not adopted, and some six or seven years later another convocation again deplored the freedom with which excommunication was decreed, often by persons possessing no ecclesiastical jurisdiction, and in cases purely temporal, such as non-payment of legacies, tithes, etc. No better remedy than the previous one, however, could be suggested—that of denouncing the offender as contumacious instead of excommunicate.[3] How little the law had changed by the change in religion is shown by a legal treatise of the time which describes all the disabilities of the excommunicate in the thirteenth century as still in force. He was regarded as of old as a leper, and was

[1] Strype's Annals, I. pp. 523, 584.

[2] Strype's Grindal, p. 259; also Append. No. xv.

[3] Ibid. Append. No. xvi.

deprived of all legal rights.[1] It is true that these laws were not in all cases enforced, and in Feb. 1585, we find Sir Ralph Sadler then in charge of Queen Mary at Tutbury complaining of the number of Catholics in that part of the country, and desiring that the Bishop of the diocese "be quickened and admonished from her majesty to look better to his flock, so as they may be induced to come to the church according to the law, or else that they feel the smart of the same." Each sect naturally desired to persecute all others, and when Sir Amias Poulet, who was a Puritan, obtained the stewardship of Lord Paget's forfeited lands in the neighborhood, he eagerly promised that the number of recusants among the tenantry should be speedily diminished.[2]

The people might complain of oppression, and religion might be rendered odious by the abuse of its most sacred mysteries, but the tendency of the governing powers was towards arbitrary repression, and enlightened liberality was not to be expected. The royal prerogative sought to extend itself in every direction, and the crown, in its capacity of supreme head of the church, found spiritual censures too convenient an instrument of tyranny to abandon one jot of the advantage which it thence derived of evading or supplementing the common law. Among his other devices for illegally raising money, Charles I., in 1640, caused the synods of Canterbury and York to levy a "benevolence" on the clergy, the payment of which was enforced, among other penalties, by excommunication;[3] and the system was recognized as so intolerable a burden, that when, a few months later, the Long Parliament met, a petition from fifteen thousand citizens of London described, among other grievances, that the ecclesiastical courts "claimed their calling immediately from the Lord Jesus Christ; which is against the

[1] Theloall, Le Digest des Briefes Original, fol. 19, 20. Londini, 1579.

[2] Morris's Letter Books of Sir Amias Poulet, London, 1874, pp. 23, 66.

[3] This "benevolence" was carefully kept out of the published proceedings of the synods. See the speeches in Parliament against it—Parl. Hist. IX. 80, 85, 91–2, etc.

laws of this kingdom, and derogatory to his Majesty and his state royal," and further protested against "The multitude of canons formerly made; wherein, among other things, excommunication, *ipso facto*, is denounced for speaking of a word against the devices aforesaid, or subscription thereunto. . . . . XXIII. The great increase and frequency of whoredoms and adulteries, occasioned by the prelates' corrupt administration of justice in such cases, who taking upon themselves the punishment of it do turn all into monies for the filling of their purses. . . . . XXIV. The general abuse of that great ordinance of excommunication, which God hath left in his church to be the last and greatest punishment the church can inflict upon obstinate and great offenders; and the prelates and their officers, who of right have nothing to do with it, do daily excommunicate men either for doing that which is lawful, or for vain, idle, and trivial matters; as working or opening a shop on a holy day; for not appearing, at every beck, upon their summons; not paying a fee or the like: yea, they have made it as they do all other things, a hook or instrument wherewith to empty men's purses, and to advance their own greatness; and so that sacred ordinance of God, by their perverting of it, becomes contemptible to all men, and seldom or never used against notorious offenders, who, for the most part, are their favorites."[1]

Even making allowance for indignant exaggeration, this shows how all the abuses which led to the Reformation were rapidly being revived and systematized in the new establishment. A sacerdotal church and caste were growing up on the pattern of the ancient hierarchy, with the substitution of a king for a pope—the combination of spiritual with temporal tyranny pointing inevitably to the establishment of a despotism as complete as that of the Cæsars. At this moment, it is true, a fresh impulse had been given to popular indignation by the action of the synods of 1640 above referred to; and a glance

[1] Parl. Hist. IX. 114–20.

at the canons there adopted under the guidance of Laud, and promulgated by royal proclamation under the great seal, will serve to show how efficiently the censures of the church were being used in aid of the Star Chamber and the Court of High Commission, for the purity of the faith and the supremacy of the crown.

First in the order of the canons is the declaration that "The most High and Sacred order of Kings is of Divine right, being the ordinance of God himself, founded in the prime laws of nature, and clearly established by expresse texts both of the Old and New Testaments. A supream power is given to this most excellent Order by God himself in the Scriptures. . . . . The care of God's church is so committed to Kings in the Scripture, that they are commended when the Church keeps the right way, and taxed when it runs amisse, and therefore her government belongs in chief unto Kings. . . . . For subjects to bear arms against their Kings, offensive or defensive, upon any pretence whatsoever, is at the least to resist the powers that are ordained of God: And though they do not invade but only resist, St. Paul tells them plainly, They shall receive to themselves damnation."[1] These comfortable doctrines were ordered to be read at least once a quarter by every parson, vicar, curate, and preacher in the kingdom, and any one maintaining the contrary was ordered to be excommunicated by the royal commissioners till he should repent.

The precautions for enforcing uniformity of religion were still more efficacious. All Papists, Socinians, Anabaptists, Brownists, Separatists, Familists, etc., were warned against absenting themselves for a month from their parish churches without lawful impediment, and churchwardens and sidemen were instructed to be on the watch for those who attended church and listened to the sermon without joining in the services or taking communion. Recusants were to be reported at the

[1] Constitutions and Canons Ecclesiasticall, No. 1.—Published by his Majesties Authority, London, 1640.

visitations in order to their due excommunication, which was to be repeated every three months, both in their parish church and in the cathedral of their diocese. If this proved ineffectual, the obstinate offenders were to be reported to the judges of assize, and once a year the bishops were ordered to forward to the high court of chancery a list of all who remained under excommunication beyond the time allowed by law, with a request that writs *de excommunicato capiendo* should forthwith be issued against them; and the execution of these writs with promptness and energy was enjoined on all sheriffs and their deputies. No excommunicate remaining under censure beyond the legal term could be absolved by any ecclesiastical court without making personal appearance, and taking the oath "De parendo juri et stando mandatis ecclesiæ," which placed the unlucky penitent completely at the mercy of his ghostly persecutors.[1]

The pestilent invention of printing was deprived of its capacity for evil with the same care. Any stationer, printer, or importer who might print, buy, sell, or disperse any book or scandalous pamphlet against the faith, discipline, or government of the Church of England was excommunicate *ipso facto*, and his name was ordered to be sent to the attorney-general for prosecution "according to the late decree in the Honorable Court of Star Chamber against the spreaders of prohibited books." Any preacher who vented such damnable doctrine in a sermon was to be excommunicated for a first offence, and deprived for a repetition. Even the possession of such books, except by doctors of divinity in orders, graduates in divinity, or persons having episcopal or archidiaconal jurisdiction, was visited with the same penalties. Some provisions were added to prevent the decree of excommunication by persons not properly qualified, but these were counterbalanced by similar restrictions laid on the granting of absolution.[2]

[1] See the speech in Parliament of Nathaniel Finnes, Rushworth's Collections, IV. 109.

[2] Constitutions and Canons, Nos. 3, 4, 5, 14, 15.

Such regulations as these, agreed upon in a conclave of prelates, and given the force of law by royal proclamation, betokened a rapid concentration of spiritual and temporal despotism to which Englishmen in that age were not likely to submit. It is no wonder then that one of the first efforts of the Long Parliament which assembled in Nov. 1640, was directed against them, the chief arguments being levelled at the palpable infringements on the rights of Parliament. So fierce was the attack that when the matter came to a vote, Dec. 16th, no one dared to record himself against a resolution which declared "That the Canons and Constitutions Ecclesiastical, treated upon by the Archbishops of Canterbury and York, Presidents of the Convocations for the respective Provinces of Canterbury and York, and the rest of the Bishops and Clergy of these Provinces, and agreed upon with the King's Majesty's license in their several Synods begun at London and York in the year 1640, do contain in them matter contrary to the King's Prerogative, to the fundamental Laws and Statutes of the Realm, to the Rights of Parliament, to the Property and Liberty of the Subject, and Matters tending to Sedition and of dangerous consequence."[1] The proceedings against Strafford and Laud, with the pressure of the tumultuous business of that revolutionary time, prevented the early action of the Lords on this resolution, but at length, June 12th, 1641, it received their assent, notwithstanding that Hall, Bishop of Exeter, endeavored to shift to the shoulders of the king the whole responsibility: "It is *le Roy le veult* that of Bills makes Laws. So was it for us to do in the Matter of Canons; we might propound some such constitutions as we should think might be useful; but when we have done we send them to his majesty, who, perusing them *cum avisamento concilii sui*, and approving them puts Life into them; and of dead Propositions makes them Canons: as, therefore, the Laws are the King's laws and not ours, so are the Canons the King's Canons and

[1] Rushworth, IV. 112.

not the Clergy's. Think thus of them, and then draw what conclusions you please."[1] The conclusions which it pleased the Commons to draw were not agreeable to the good bishop, for on August 3d he was impeached, with thirteen others, for their share in the business.[2]

As the puritan cause advanced, its ministers naturally sought to secure for themselves the powers which were slipping from the grasp of the heads of the established church; and the Assembly of Westminster, in 1645, asserted the power of the keys by divine appointment and not by the laws of the land, with a distinctness worthy of Rome herself. It framed accordingly a scheme of church-government which lodged in each congregational assembly the prerogative which we have seen exercised by the kirk-sessions of Scotland.[3] Parliament, however, was not disposed to abandon any of its rights as the supreme law-making and law-dispensing body, and an earnest controversy arose between it and the Assembly. To the great disgust of the extreme puritans, this resulted in the complete assertion of secular control over the church. An act was passed conferring on the congregational assemblies the right to suspend from communion in certain specified cases and in accordance with a prescribed form of trial, but all persons so excommunicated were empowered to appeal to the classical assemblies, the synods, and finally to Parliament itself.[4] Thus not only were the pretensions of the Jus Divinum scouted, but the very exercise of control over the sacraments was subordinated to the civil authority.

It is hardly worth while to pursue the subject further, for all these questions were practically settled by the Great Rebellion; and, when the storm was past, England, in its final reconstruction, gradually outgrew the spiritual terrors which yet lingered on the statute-book. When, in 1667, Cuthbert Har-

[1] Parl. Hist. IX. 351–3. [2] Ibid. p. 467.

[3] Neal's Hist. of Puritans, Vol. II. p. 194, and Append. No. 3 (Ed. 1754).

[4] Rushworth, VI. 210–12.

rison, who, after ordination in the Church of England, rendered himself disagreeably conspicuous as a nonconformist, was excommunicated and forcibly put out of his parish church of Kirkham by the vicar, named Clegg, the latter sued him for the fine of twenty shillings per month for six months' non-attendance at divine service. Harrison proved that he had presented himself once in every two months, and had been ejected by the plaintiff, and the judge in his charge to the jury described the defendant's position as "There is a fiddle to be hanged and a fiddle not to be hanged," dwelling upon the inconsistency of excommunicating a man, preventing him from going to church, and then fining him for not going. The jury took the same view of the law, and found for the defendant, with costs on the plaintiff.[1] There was evidently scant encouragement for zealous upholders of church discipline, and it need not surprise us to find, in the opening years of the eighteenth century, honest Joseph Bingham deploring the laxity which had pervaded the church ever since men's minds had been perverted in the Rebellion. Three communions per annum were still obligatory, and the pastor was bound to present as notorious delinquents all who did not obey the rule; but experience showed that, especially in country parishes (and Bingham was a country parson), it was impossible to force the laity to obey the law, and that it was equally useless to present them for the disobedience.[2]

Yet a legal author of the latter part of the last century describes all the old forms as being still in force—the writ *de excommunicato capiendo* being issued after forty days allowed for repentance, and the excommunicate being disabled from executing a will, serving on juries, appearing as a witness, or bringing an action at law.[3] At length, in 1814, the change

[1] London Athenæum, August 29th, 1874, from "Fishwick's History of the Parish of Kirkham."

[2] Bingham's Antiquities, chap. ix. §§ 7, 8.

[3] Burn's Law Dictionary, Dublin, 1792, p. 280.

suggested by Grindal in 1580 was made, of substituting a writ *de contumace capiendo* for the older form, but it worked no substantial change in the principles involved.[1] Practically, however, it appears to be little more than providing for the ecclesiastical courts a counterpart of the "contempt" with which the secular tribunals enforce their jurisdiction. A church which is subjected to a free state becomes insensibly moulded to suit the average of public opinion; and those who were concerned in the prosecution of Bishop Colenso have probably acknowledged that in the nineteenth century it is not easy to bring the rigors of ecclesiastical law to bear against any man.

From this long history of oppression and wrong we may learn how easily the greed, the ambition, or the bigotry of man can convert to the worst purposes the most beneficent of creeds; and how unequal is our weak human nature to the exercise of irresponsible authority. Honest fanaticism and unscrupulous selfishness have vied with each other in using as a weapon for the subjugation of body and soul the brightest promises made by a benignant Saviour to his children; and every increase of power has been marked by an increase in its abuse. It is a saddening thought that a religion, so ennobling and so purifying in its essence, should have accomplished so little for humanity in this life, and that the ages in which it ruled the heart and intellect most completely should be those in which its influence was the least efficient for good and the most potent for evil. Its great central principles of love, and charity, and self-sacrifice seem ever to have found their most determined enemies in those who had assumed its ministry and had bound themselves to its service; and every conquest made by its spirit has been won against the earnest resistance of its special defenders. Even though the last two centuries have been marked by a development of true Christianity, still

[1] 53 Geo. III. c. 137, § 2 (Wharton's Law Dict. s. v.).

the old arrogance and uncharitableness exist. Indifferentism and irreligion are assumed to be the motives of men who most earnestly strive to obey the laws of Christ; and it would scarce be safer now than in the thirteenth century to intrust temporal authority to those who claim to represent the Redeemer and His Apostles.

There is much, then, to be done ere the precepts of the Gospel can truly be said to control the lives and the characters of men; and all who are earnest in the good work can derive from the errors and the follies of the past not only a noble zeal of indignation to nerve them afresh for the long struggle, but also hopeful encouragement for the future in measuring the progress of these latter-days.

THE EARLY CHURCH AND SLAVERY.

THE subjects which we have been considering have exhibited the church in some of its worst aspects. We have seen how the lusts of the world made the precepts of Christ minister to human pride and ambition, until the most absolute of theocracies arose from a religion of peace, and love, and charity. It is a relief, therefore, to turn to a theme which shows the church in a different light, more nearly true to the great principles on which it was founded, and exerting its moral influence and its material power for the elevation of man.

That Christ rejected as incompatible with his great mission all direct interference with the existing organization of society is self-evident. He preached non-resistance and subordination to the powers that be. His object was not to found a sect like Islam, which should go forth to conquer the infidel, with the gospel in one hand and the sword in the other, but to regenerate human nature, so that in the long succession of centuries man should be purified and evil suffer a gradual but a permanent overthrow. When he proclaimed the principle of the Golden Rule; when St. Paul bade Philemon to take back the fugitive Onesimus not as a slave but above a slave, a brother beloved; when he ordered masters to grant justice and equality to slaves for the sake of the Master of all, the rules of life were laid down, which, conscientiously followed, must render slavery finally impossible among Christians. Precepts were thus enunciated for man's guidance, and he was left to apply them

to the best of his imperfect ability. How imperfect that was, we have had ample proof in the preceding pages; and instead of wondering, as some have done, that slavery was not extinguished as soon as the Christian religion became dominant, the only cause for surprise is that the rapidly developing greed of power and spirit of aggrandizement did not lend themselves to the aggravation of slavery, even as they aided in the perpetuation of so many old abuses or replaced them by new forms of despotism.

The world into which Christianity was born recognized slavery everywhere. Practised by all races from time immemorial, permitted by all religions, regulated by all codes, it was apparently an institution as inseparable from society as the relationship of parent and child. What were the restrictions laid upon it in the Mosaic code or the customs which guarded it among the Greeks are foreign to my present purpose, but it is worth while to cast a glance at slavery as it existed in Rome, whose laws were dominant and rapidly superseded all others throughout the region destined to receive and believe the truths of the Gospel.

In Rome, as elsewhere, slavery had its origin in war. The vanquished enemy, exposed by the cruel public law of the age to the caprice of the victor, could be put to death. If he was allowed to live, it could only be to devote his forfeited life to the service of him to whom it belonged, and the very name of slave—*servus* or *mancipium*—was derived from the fact that he was saved from death or captured by the hand of the master.[1] Slavery was not regarded as the natural portion of any race or people. In the abstract, liberty alone was natural, and slavery was an unnatural condition, deriving its existence from law and custom only.[2] As Ulpian expresses it, although by the

[1] Servi autum ex eo appellati sunt, quod imperatores captivos vendere jubent, ac per hoc servare nec occidere solent: qui etiam mancipia dicti sunt, eo quod ab hostibus manu capiantur.—L. 4. Dig. I. v.

[2] Libertas est naturalis facultas ejus quod cuique facere libet, nisi si quid vi aut jure prohibetur. Servitus est constitutio juris gentium, qua

civil law slaves were nothing, yet by natural law all men are equal.[1] Freedom was virtually imprescriptible. In the earlier ages of the empire, the freeman who was his own master could in no way be reduced to slavery. Even if he sold himself into servitude, the bargain could not be enforced, and swindlers were wont to take advantage of this principle by personating slaves and having themselves sold by an accomplice, with whom they shared the proceeds, leaving the unlucky purchaser without redress. This became so prevalent that to suppress it a law was enacted under the empire (probably the *Senatusconsultum Claudianum*) which reduced to slavery the knave who thus speculated on the reverence of the law for freedom; yet even in these flagrant cases, the most scrupulous care was shown to guard the interests of liberty. If the sharper were less than twenty years old, he could claim his freedom on attaining that age; if the purchaser knew that he was a freeman, or if the freeman were ignorant of his freedom, the sale was null, and the purchaser lost the purchase money. To enforce the penalty, moreover, it was necessary to prove that the simulated slave had received a share of the spoils.[2] It is true that among the primitive Romans the military character of their institutions doomed to servitude the man who endeavored to escape the obligation of defending his country in arms. The Republic, it was sternly said, needed no such citizens.[3] As early as the close of the second century A. D., however, Arrius Menander speaks of this law as merely an antiquarian curiosity.[4] In early times, moreover, penal servitude, to a greater or less degree, was also inflicted on the professional robber, the bankrupt debtor, and the citizen who kept

quis domino alieno contra naturam subjicitur.—*Ibid.*—These passages are attributed in the Digest to Florentinus, a jurisconsult who flourished about A. D. 230.

[1] L. 32. Dig. L. xvii. (Ulpian).

[2] L. 7. Dig. XL. xii.—L. 1. Dig. XL. xiii. (Ulpian).

[3] Valer. Max. I. iii. 4.

[4] L. 4. § 10. Dig. XLIX. xvi. (Arrius Menander).

his name from the census, but with the softening of manners all these regulations disappeared. Suetonius says that Augustus revived a forgotten law by punishing with confiscation and loss of liberty a knight who mutilated his two sons to exempt them from military service;[1] but Arrius specifies deportation as the penalty for this crime under Trajan,[2] and the same prince decided in favor of the freedom of children exposed by their parents and brought up as slaves by those who had found them; even the expenses of their support could not be demanded.[3] Thus under the empire it was almost impossible for a freeman to forfeit his liberty.

There was but one way, too, by which a woman could be reduced to slavery, and it was likewise instituted by the law of Claudius. If a woman, knowing herself to be free, married a slave and refused to leave him on being duly warned by her husband's master, she became his slave; but if she believed herself to be a slave she was not made to suffer for her ignorance, and if she were a *filiafamilias* who had thus degraded herself without the consent of her father, she was likewise protected.[4] With such religious care were doubtful points construed in favor of freedom, that, if a woman became a slave during pregnancy, her child was born free; if a female slave was manumitted during pregnancy, the child was free; and if after her manumission she relapsed into slavery before the birth of her child, her momentary freedom was sufficient to insure the perpetual freedom of the offspring.[5] Thus slavery was merely the creature of law, and the law was held in all cases to favor the natural right of freedom.

Yet, as though to compensate for this reverence for liberty, Roman slavery was hard and unrelenting. The right of the master was supreme. The stern and unbending character of

[1] August. xxiv.
[2] L. 4. § 11. Dig. XLIX. xvi. (Arrius Menander).
[3] C. Plin. Secund. Lib. x. Epist. 72.
[4] Pauli Lib. II. Sent. Recept. Tit. xxi. A.
[5] Ejusd. Tit. xxiv.

the race was shown in all its institutions, and principles once admitted were carried out to their logical results with all the severity of a mathematical demonstration. I have just quoted a dictum of Ulpian's that, in the eyes of the law, slaves were nothing. From the primitive days of the republic, the power of a father over his children knew no limit. Their life and death were in his hands; he could sell them into slavery, and the son was liberated from the *patria potestas* only by being thrice thus sold and returned, which became the legal formula for emancipating him from parental control.[1] That no limit should be placed on the power of the paterfamilias over the bondsman whom he had captured in war, bought with his money, or had born to him in his household, was therefore but reasonable. No humanizing laws, like those of Moses, restrained the passions or caprices of the master. In those early times, indeed, open and wanton cruelty was probably not common and was condemned by public opinion, the sensitiveness of which is shown by the story of Antronius Maximus. When, in A. U. C. 264, previous to the opening of the games, he drove with stripes around the circus a slave fastened to a yoke, it provoked the interposition of the gods. Jupiter appeared in a vision to a certain Aunius and ordered him to announce to the Senate the divine indignation at the outrage. As Aunius hesitated, he received a warning in the sudden death of his son. A second vision was likewise unheeded,

[1] Legg. XII. Tab. IV. (Ulpian. Frag. Tit. X. § 1). Though critics may reasonably object to the genuineness of all the fragments attributed to the decemviral legislation, there can be little doubt that they reflect the primitive customs of the Romans.

In process of time, however, this paternal power of sale was abrogated in favor of the inalienable rights of freedom. "Qui contemplatione extremæ necessitatis, aut alimentorum gratia filios suos vendiderint, statui ingenuitatis eorum non præjudicant: *homo enim liber nullo prætio æstimatur.*" (Pauli Sent. Recept. Lib. V. Tit. I. § 1.) Yet the pressure of misery continued to produce such transactions, and Diocletian was obliged to again assert their nullity (Const. I. Cod. Lib. IV. Tit. XLIII.), though not long afterwards Constantine seems to have thought that the right had never existed (Lib. IV. Cod. Theod. VIII. 2).

when he was himself attacked with mortal illness. Yielding at length, he was carried to the Senate, where, on fulfilling his mission, he was suddenly restored to health, and the Senate passed the Mævian law, which added another day to the exercises of the circus, as a propitiation to the offended deity.[1]

In these early times slaves were comparatively few. Citizens were wanted in the infant state, and the neighboring tribes when subdued were brought to Rome to increase the numbers of the people and not to minister to an idleness and luxury as yet unknown in the simplicity of manners. As the Roman conquests spread, however, the captives became an important portion of the spoils, and they were sent home in myriads to gratify the pride and add to the wealth of the victor. When, in A. U. C. 544, Fabius sacked Tarentum, thirty thousand slaves were added to the population of Rome;[2] and forty years later, at the close of the third Macedonian war, L. Æmilius Paullus reduced to slavery one hundred and fifty thousand Epirots.[3] A slave-trade prosecuted on such a scale, co-operating with the natural increase, rapidly swelled their numbers to an extent which renders not improbable the assertion of Athenæus that wealthy proprietors owned sometimes from ten to twenty thousand, and even more.[4] We learn from Livy that portions of Italy, anciently populous with freemen, were even in his time occupied almost exclusively by slaves;[5] and when the Conscript Fathers feared to give them a peculiar dress, in dread of the possible consequences when they should be enabled to recognize the comparative fewness of the freemen,[6] we are almost ready to accept the calculation of Gibbon, who estimates that under Claudius the slave population was equal to the free, each comprising about sixty millions of souls.[7]

[1] Macrob. Saturnal. I. xi.
[2] T. Liv. XXVII. xvi.
[3] Ibid. XLV. XXXIV.
[4] Deipnosoph. VI. vii.
[5] T. Liv. VI. xii.
[6] L. A. Senecæ de Clement. I. xxiv.
[7] Decline and Fall, chap. II.

Under such circumstances the lot of the bondsman could not but become harder. In the ages of primitive simplicity, the slave was valuable, and was rather an humble companion than a slave.[1] When massed in countless numbers, and sold at an inconsiderable price, his position in the social scale became naturally enormously depressed.[2] In the early days of the republic, we have seen that the unmerciful beating of a slave in the circus was deemed worthy the interposition of the gods. In the early days of the empire, Vedius Pollio was in the habit of feeding the fish intended for his table with the living slaves who chanced to displease him. On one occasion when Augustus was supping with him, Vedius ordered this discipline for a slave who happened to break a glass. The unhappy wretch threw himself at the Emperor's feet and implored his intercession to secure for him some less frightful death. Augustus, who was not naturally cruel, freed the slave, and punished Pollio by having all his glass broken on the spot, and causing his cannibal fish-pond to be filled up.[3] Juvenal, therefore, can scarcely be deemed an unfaithful delineator of the manners of the time, when he makes the Roman matron crucify her slaves from no motive but the caprice of the moment, while she characterizes as insanity the inquiry whether he also was not a human being.[4] The well-known story of

[1] Macrob. Saturnal. I. xi.

[2] According to Horace (Sat. II. vii. 43), the value of a common slave was 500 drachmæ, equivalent to about one hundred dollars of our money—

—— Quid si me stultior ipso
Quingentis sumpto drachmis deprenderis?

When the wealth of the world was concentrated in Rome, so trifling a value could offer no check to the capricious cruelty of the master.

[3] L. A. Senec. de Clement. I. xviii.—de Ira III. xl.—Perhaps the Emperor shuddered at the thought that some of Pollio's slaves might have been served up to him in a matelotte.

[4] Pone crucem servo.—Meruit quo crimine servus
Supplicium? Quis testis adest? Quis detulit? Audi,
Nulla unquam de morte hominis cunctatio longa est.
O demens, ita servus homo est? Nil fecerit, esto;
Hoc volo, sic jubeo, sit pro ratione voluntas.—*Sat.* VI. 218.

Epictetus aptly illustrates the unlimited despotism to which the unfortunate class was exposed. Placed on the rack to gratify a whim of his master Epaphroditus, the stoic quietly remarked—"You will break my leg presently"—and then, as the bone snapped, he added, "I told you that you would break my leg." It is easy to understand the origin of the Roman proverb, "Totidem esse hostes quot servos," when masters were in the habit of exposing their invalid slaves to escape the expense of nursing them, and the utmost that the law could do for them was to decree that those who chanced to recover should be liberated from their inhuman owners.[1] In fact, the *L. Aquilia* rates slaves literally as cattle, for whom their masters were to be reimbursed at their full value, when any one else indulged in the luxury of maliciously killing them, and this would appear to be the only safeguard vouchsafed them by the law.[2]

Such institutions could only be maintained by a system of rigorous terrorism. All masters of course were not equally cruel, and instances are not wanting where slaves heroically sacrificed themselves to save their owners' lives[3], but most men deem it easier to rule by force than by affection, and the Roman laws took it for granted that safety was only to be obtained through cruelty. During the second Punic war, twenty-five slaves detected in a conspiracy were promptly crucified.[4] When the terrible rebellion of the Sicilian slaves was quenched in blood, the miserable remnant of those spared by the sword, a thousand in number, were sent to Rome and devoted to the beasts of the amphitheatre, to escape which they mutually slaughtered each other to the last man.[5] Of the seventy-five

[1] Sueton. Claud. XXV.—Dion. Cass. Hist. Roman. Lib. LX. (Ed. 1592 p. 788).

[2] L. 2 § 1 Dig. IX. ii. (Ulpian). The ancient Egyptians were more humane. According to Diodorus Siculus (Lib. I. cap. 77) they punished impartially with death the homicide both of slaves and freemen.

[3] Macrob. Saturnal. I. xi.—Senec. de Benefic. III. xxiii. sqq.

[4] T. Livii XXII. XXXIII.

[5] Diodor. Sicul. Lib. XXXVI.

thousand who, according to Livy, were destroyed in suppressing the revolt of Spartacus, thousands were impaled or crucified and planted along the road-sides as a warning. The safety of the private citizen was guarded with the same merciless care. If a master was murdered in his own house, all his household slaves were put to death, on the presumption that some of them must have been privy to the crime, and that thus alone could all the guilty be reached and the servile population be taught that their master's life was necessary to their own. Thus, in A. D. 62, when Pedaneus Secundus, Prefect of the city, was slain under his own roof by a slave whom he had wronged, four hundred unfortunates were executed in obedience to this cruel custom. Such instances, however, must have been rare, for the Senate was urgently called upon to interfere, and the streets had to be lined with soldiers to prevent the populace from rescuing the victims.[1]

In other respects also the position of the slave grew worse in the early years of the empire, for difficulties were thrown in the way of manumission, and the liberation of the freedman was compromised. Under the republic, the master might liberate his slave either by the ceremony of the rod (*vindicta*) in open court, or by having him inscribed in the quinquennial census, or by will, and the freedman obtained the rights of citizenship.[2] When slaves were few and valuable, in early times, this facility of manumission produced but little evil, but as their numbers increased and their value diminished, the class of freedmen became enormously enlarged. Even in the second Punic war, when the slaughter of Thrasymene and Cannæ left the state almost without defenders, the expedient was adopted of enlisting slaves as volunteers, when eight thousand promptly enrolled themselves and were purchased for the public. They did noble service at Beneventum, and were rewarded with their

[1] Tacit. Annal. xiv. xlii.–xlv.

[2] Frag. Vet. Jcti. de Manumiss. § 5 (Hugo, Jus. Civil. Antejustin. I. 253).

liberty.[1] During the successive furious civil wars which marked the closing years of the republic, this example was followed by the several factions, which recruited their armies with vast numbers of slaves, liberated for the purpose. When Augustus undertook to construct a new and stable order of things, he took exception to this growing class of freedmen, and laid restrictions on the indiscriminate practice of manumission, especially as regards the rights of citizenship involved in it.[2] Thus the law *Ælia Sentia*, adopted in A. D. 4, forbade the liberation of any slave under the age of thirty, or by any master under the age of twenty, except when the act was approved by a board of five senators and five knights in Rome, or of twenty magistrates in the provinces. All manumissions in violation of these provisions, and all which defrauded creditors were pronounced null and void.[3] The expressions of Suetonius would imply moreover greater restrictions than appear in the law as it has reached us, and it is probable that it may have contained other clauses, or that still severer edicts were promulgated which were subsequently repealed, and thus have not been alluded to by the later jurisconsults. Another restriction of considerable importance was instituted in A. D. 9 by the *L. Furia Canina*, which prohibited the liberation by

[1] T. Livii XXII. lvii.; XXIV. xv. xvi. After serving for a year, the slaves began to clamor for their freedom. In the face of the enemy at Beneventum, T. Sempronius Gracchus promised that if they gained the victory, each one who should bring him the head of a foe should be manumitted. Encouraged by this, they commenced the attack with great fury, but as each one dispatched an antagonist, he paused to cut off the head, the encumbrance of which rendered him subsequently almost useless. Gracchus, finding himself on the point of defeat from this cause, proclaimed that all should be freed in the event of victory. This answered the purpose, and the Carthaginians were defeated with heavy slaughter.

[2] Sueton. August. xl.

[3] Ulpian. Frag. Tit. I. §§ 11, 12.—Gaii Lib. I. Instit. Tit. i. §§ 4, 5.—The references to Gaius are made to the older edition, extracted from the Breviarium Alaricianum (Hugo, op. cit. I. 187) as I have not access to the complete copy published from a palimpsest discovered by Niebuhr and Savigny in 1816.

testament of more than a certain proportion of the slaves of a decedent. Thus of three, but one could be set free; from three to ten, not more than one-half; from ten to thirty, but one-third; from thirty to one hundred, but one-fourth; from one hundred to five hundred, but one-fifth, while one hundred was the largest number which any proprietor could set free in his will.[1] It is not difficult to estimate the influence which this must have had in restraining the posthumous liberality which is so easy, and which in Rome had long been a favorite with the ostentatious who desired their obsequies to be attended by long lines of freedmen wearing the caps that denoted their condition.[2]

At the same time considerable changes for the worse were introduced in the condition of the freedman. The *L. Ælia Sentia* created a class called *dedititii*. Any slave guilty of crime was prohibited from attaining the dignity of citizenship, and on manumission became a *dedititius*. He could never rise to citizenship, he was incapable of receiving legacies, and as he could not execute a will, whatever property he accumulated reverted on his death to his former master or patron. In A. D. 19, a third class of freedmen, known as *Latini*, was created by the *L. Junia Norbana*. These were manumitted without the intervention of the public authorities, by a simple declaration or writing of the master. They were not admitted to citizenship, but had the position of Latin colonists. In certain cases, the civil magistrate could remand them into slavery or the patron might, by the *vindicta* or by will, elevate them to citizenship.[3] Like the *dedititii*, they were incapable of devising property, and their estates reverted to the patron or his family on their death.[4] Subsequent laws, however, granted

[1] Ulpian. Frag. Tit. I. §§ 24, 25.—Pauli Sent. Recept. Lib. IV. Tit. xiv. § 4.

[2] Dion. Halicar. IV. xxiv.

[3] Ulpian. Frag. Tit. I. § 10.—Gaii. Lib. I. §§ 2, 4.—Frag. Vet. Jcti. §§ 8–16.

[4] Instit. III. vii. 4.

citizenship to the Latinus who served ten years in the army, who built a ship of ten thousand bushels capacity and sailed it six years in bringing corn to Rome, who constructed a certain number of buildings, who established a bakery, etc.[1]

These were not the only restrictions imposed on the liberated slave. Under the Roman law the relations between the freedman and his patron, or former master, were peculiar. The master might manumit a slave under conditions, and thus require the continued rendering of service; and even when the manumission was unconditional, the dependence was by no means removed. The slave was born into liberty by means of his master, who thus was his second father, and the same reverence was due to him as to a parent.[2] The ingratitude of a freedman towards his patron was therefore a crime punishable by law, and the magistrates were directed to chastise any neglect of duty, with a threat of increasing punishment for repetitions of offence. Insults were visited with temporary exile, and blows or delation with condemnation to the mines.[3] The patron had also claims on the estate of the freedman. As early as the laws of the Twelve Tables, he was sole heir when the freedman died intestate and without heirs, or with heirs not recognized as legal, or with a will and without heirs. Under the empire, if a freedman had no children, one half of his estate went to the patron, and if his will neglected to make this provision, the law stepped in and effected the partition.[4]

Claudius sought to render still more precarious the illusory liberty enjoyed by the freedman. He punished by confiscating to the state those who aspired to the equestrian order, which was beyond the sphere allotted to them by law, and he remanded to servitude all who manifested ingratitude or gave cause of complaint to their patrons.[5] Not content with this,

[1] Ulpian. Frag. Tit. III.

[2] L. 2. Dig. XXXVII. XV. (Julian.) Ibid. l. 9. (Ulpian).

[3] L. 1. Dig. XXXVII. XIV. (Ulpian).

[4] Ulpian. Frag. Tit. XXIX. § 1.

[5] Sueton. Claud. XXV.—The imperial jurisprudence on the subject of freedmen would almost seem to have been derived from the immemorial

he put to death large numbers of those who under Tiberius and Caligula had turned informers against their patrons.[1]

Up to this time, therefore, the condition of the servile classes had become steadily worse. The only efforts in their favor were the *L. Petronia*, which, in A. D. 11, prohibited the master from devoting his slaves to combat with the beasts, unless with the approval of a magistrate,[2] and a law of Claudius which treated as murder the deliberate killing of an infirm slave to save the expense of his cure.[3] There was no other restriction on his absolute control over life and limb, and the sole resource of the slave was to seek if possible a momentary asylum in some temple or at a statue of the emperor, forcible removal from which incurred the penalty of sacrilege or of treason.[4]

This appears to be the turning point, as all subsequent legislation tended to the amelioration of the servile condition. Under Nero, Seneca alludes to magistrates whose duty it was to investigate cases of cruelty committed on slaves, and to repress the severity of masters, their lusts, and the avarice which would deny to the slave the necessaries of life.[5] This, however, can scarcely be regarded as a formal custom of the empire, since otherwise the reforms of Hadrian would scarcely have been called for. The latter prohibited the murder of slaves by their masters, ordering them when guilty to have a trial before the regular judges. He forbade their sale for prostitution or the arena without cause. He endeavored to do away with the private dungeons which formed so horrible a feature of Roman

legislation of India, which declared the complete emancipation of the servile class to be impossible—"A Sudra, even if manumitted by his master, is not released from the condition of servitude, for who can relieve him from that condition which is his nature?—Laws of Manu, Bk. VIII. st. 414.

[1] Dion. Cass. Hist. Roman. Lib. LX. (Ed. 1592, p. 774).

[2] L. 11, §§ 1, 2 Dig. XLVIII. viii. (Modestin.)

[3] Sueton. Claud. XXV.

[4] Senecæ de Clement. I. xviii. Cf. Const. vi. Cod. I. xii.; § 2 Instit. I. viii.

[5] Senecæ de Benef. Lib. III. cap. 22.

slavery; and he ordered that where a master was killed within his own house only those slaves whose proximity to the scene of the crime exposed them to reasonable suspicion should be held accountable.[1] That these humane provisions were not merely theoretical reforms is evident when he gave to the world a practical illustration of his detestation for wanton cruelty by punishing with five years of exile an Umbrician matron who had maltreated her slaves with atrocious severity.[2] About the year 160 A. D. the best of the Cæsars, Antoninus Pius, decreed that the master who wantonly killed a slave should be subjected to the same punishment as though it had been the slave of another[3]—the penalty being prosecution under the *L. Cornelia de Sicariis* or the *L. Aquilia*.[4] This put an end to the unlimited power of the master, and a jurisconsult of the period expressly states that in future no slave can be put to death purposely, except by judicial sentence, though the master would still be held harmless if the slave died under punishment not administered with that intention.[5] Antoninus Pius also decreed that, when a slave was exposed to intolerable oppression, the magistrates on appeal could oblige the master to sell him on reasonable terms. How great was this innovation is shown by the deprecatory expressions of the emperor, disclaiming a desire to interfere with the rights of the master, and arguing that it is for his interest that his slaves should have some chance of escape from cruelty and hunger.[6] To the same period may be attributed the dictum of the Roman law that all doubtful cases involving

[1] Spartian. Hadrian. XVIII.

[2] L. 2 Dig. I. vi. (Ulpian).

[3] L. 1 Dig. I. vi. (Gaius).

[4] L. 23 § 9 Dig. IX. ii. (Ulpian). The *L. Aquilia* permitted the master of a murdered slave to sue for the value of the slave (L. 1 Dig. IX. ii.). This of course was inapplicable to the case of a man killing his own slave. The *L. Cornelia* originally permitted homicide with deportation and confiscation, but Marcian states that in his time (c. 200 A. D.) this was only practised with men of rank. The middle classes suffered beheading, and the rabble were given to the wild beasts (L. 3 § 5 Dig. XLVIII. viii.).

[5] Gaii Lib. I. Instit. iii. § 1.

[6] § 2 Instit. I. viii.—L. 2 Dig. I. vi. (Ulpian).

slavery should be decided in favor of liberty.[1] Yet still, notwithstanding the influence of the Stoic philosophy which taught the common brotherhood of man, so little of humanity was recognized in the slave that the law did not consider him able to commit incest, even after manumission, and a jurist of the period, in stating that a freedman cannot marry his mother or his sister, is careful to add that this prohibition is not derived from the law but from morals.[2] Slavery was so brutalizing that even the freedman was still a brute in the eyes of the legislator.

Such was the institution of slavery in the Roman world when Christianity emerged from its obscurity. Slaveholding, if not approved, was at least tolerated in the early church, and abundant evidence exists that it was in no sense regarded as an infraction of discipline. To have made it an article of faith, or a rule that the Christian should own no slaves, would have been to threaten the structure of civil society, and to give color to the political accusations which were the pretext of successive persecutions. Yet short of this everything was done to render slavery nominal.

That to liberate the bondsman was recognized and applauded as a good work is shown not only by the frequent instances of those who at their baptism gave freedom to their slaves, as in the case of Chromatius in 284,[3] but by Lactantius when he placed it in the same line of duty as other acts of charity.[4] Indeed, the liberation of slaves and of martyrs condemned for the faith are classed in the same category, as objects to be assisted from the oblations of the churches, in the earliest extant code of Christian law, dating probably from the end of the third century.[5]

[1] L. 20 Dig. L. xvii. (Pomponius).

[2] L. 8 Dig. XXIII. ii. (Pomponius).

[3] Baron. Annal. ann. 284 No. 15.

[4] Lactant. Instit. Divin. Lib. VI. cap. 12.—He even urges it upon the pagans whom he desires to convert—"Unde bestias emis, hinc captos redime, unde feras pascis, hinc pauperes ale."

[5] Constit. Apostol. Lib. IV. cap. 9.

To the Christian the slave was no longer a chattel; he was a man and a brother. St. Ambrose, in his tract on Joseph, is careful to show by the career of the patriarch, that the slave may be superior to his master, and he laboriously enforces the conclusion that the only slavery to be dreaded is that of the passions, for sin is the real servitude, and innocence the only freedom.[1] St. Augustine declares that the owner's property in a slave is not that which is held in a horse or a treasure, and that the Gospel precept of non-resistance is not to be obeyed when it might conflict with his welfare,[2] thus assuming it to be rather a trust than an ownership. This denegation of the absolute property of man in man was not a suggestion merely of the fifth century, for it is shown tacitly but forcibly in the Apostolic constitutions, where, in alluding to the tenth commandment the man-servant and maid-servant are omitted in the enumeration, as if they were not possessions which could be coveted to the injury of a neighbor.[3]

The only justification for slavery that the early fathers could suggest was that it was a punishment for transgression, and the persistence with which St. Augustine recurs to this idea shows how fully he realized the difficulty of reconciling the institution with the goodness and justice of God.[4] Yet in attributing the origin of slavery to the Noachian curse, there was no belief felt in the modern idea that the posterity of Ham were to be perpetually in bondage. The sacrifice of Christ was held to have released them, and they shared in the atonement as fully as the rest of mankind.[5] Slaves were called brothers, and con-

[1] S. Ambrosii de Joseph Patriarch. cap. IV. §§ 20, 21. In this and similar teachings of the fathers there is much of the Stoic philosophy, with the substitution of sinlessness for the ideal of human dignity and self-sufficiency which was the aim of such moralists as Epictetus.

[2] Augustin. de Serm. Domini in Monte Lib. I. cap. 36.

[3] Constit. Apostol. VII. iv.

[4] Augustin. Sentent. clxiv.—Cf. de Civ. Dei Lib. XIX. cap. 15.—De Genesi Lib. IX.—Quæst. sup. Genesim Lib. I. No. 153, etc.

[5] Justin. Martyr. Dial. cum Tryphone.—Cf. Ambros. Comment. in Epist. I. ad Corinth. cap. vii.; Augustin. de Verb. Domin. Serm. XXVI.

sidered to be equals. Lactantius, in his exposition of Christian doctrine formally addressed to the Emperor Constantine, not only assumes this on general principles, since all are children of one God, but asserts in the most explicit manner that, among Christians, slaves and masters were practically all brethren and all on an equality;[1] and that this was the teaching of the church is shown by passages in Minucius Felix and the Apostolic Constitutions.[2]

This of course did not interfere with the legal relations between master and slave, which were fully recognized by the church;[3] but the authority of the master was to be exercised as that of a parent over his children, for the benefit of those under his care.[4] St. Ignatius found time, on his journey towards martyrdom in Rome, to include among his concise exhortations to the Smyrnæans a few words urging masters not to look down upon their slaves and slaves not to become proud.[5] Invidious distinctions between the classes were carefully removed. Thus among Christians the slave was admitted as a witness;[6] and in the minute directions respecting public worship, while men and women were separated, and each sex was arranged in careful gradations as to age and position, there is no direction to segregate the slave from the freeman[7]—in the house of God all were on an equality. Cruelty to slaves was reprobated in the strongest manner, even to the extent of refusing the oblations of harsh masters—which was tantamount to excommunication—as gifts coming from those hateful to God, and as unfit to be used in ministering to the wants of the widow and the orphan.[8]

[1] Lactant. Instit. Divin. Lib. v. cap. xiv. xv.

[2] M. Minuc. Felic. Octavius.—Constit. Apostol. Lib. v. cap. xii.

[3] Constit. Apostol. iv. xii.; vii. xiv.

[4] Lactant. de Ira Dei xviii.

[5] "Servos et ancillas ne despicias: sed neque ipsi inflentur; sed in gloriam Dei plus serviant, ut meliori libertate a Deo potiantur."—Epist. ad Polycarp. cap. iv. (Cureton, Corp. Ignat. p. 8). This epistle, I believe, is admitted on all hands to be genuine.

[6] Constit. Apostol. ii. liii. [7] Ibid. ii. lxi. [8] Ibid. iv. vi.

Marriage between slaves, which in the eye of the law was merely a *contubernium* or cohabiting, was regarded among the faithful as binding; and the close supervision exercised over the welfare of their dependents is illustrated by a curious passage which directs masters, under pain of excommunication, to provide spouses for those whose passions would otherwise lead them into sin.[1] Regular prayers in the Litany were offered for brethren enduring the hardships of servitude.[2] No master was allowed to make them work more than five days in the week, both Saturday and Sunday being days of rest, and numerous additional holidays were allowed them, including two weeks at Easter, all the principal festivals of the church, and the frequent anniversaries of the martyrs.[3]

At the same time a most prudent care was exercised to avoid increasing the odium attaching to Christianity by any interference with the legal rights of those who still labored in the darkness of paganism. The slave of an unbeliever, on being admitted to the church, was specially exhorted to strive for the good graces of his master, that the Word of God might not suffer in the estimation of the heathen,[4] and even sin was tolerated when it was committed at the command of an owner who had the legal power to enforce it.[5]

Such being the tendency of the church while it was compelled to observe extreme circumspection in its relations with a jealous and persecuting system of society, and while, under the divine precepts, it had to render implicit obedience to hostile laws and magistrates, it might have been expected when emancipated to use its influence in moulding those laws to accordance with its principles. Those principles, as we have seen, would have led directly to universal emancipation.

Why this was not the case, however, is susceptible of easy explanation. In becoming the religion of the state, Chris-

[1] Constit. Apostol. VIII. xxxviii.
[2] Ibid. VIII. xiii., xix.
[3] Ibid. VIII. xxxix.
[4] Ibid. VIII. xxxviii.
[5] Ibid. VIII. xxxviii.

tianity merely exchanged an external for an internal master. The time had not yet come when it could control the state, and meanwhile, as an affair of state it was necessarily controlled by the state. Even more ruinous to its purity was the exchange of persecution for corruption. As long as there was hazard in professing Christianity, the majority of Christians were religious by conviction, and carried their religion into their daily life. When, however, the church was taken into favor by the monarch, and offered splendid prizes to reward the ambitious, it became crowded with men whose object was self-aggrandizement, and whose restless talents speedily enabled them to dominate the humble and conscientious. With wealth and power came conservatism. The interest of the church was no longer identical with that of religion, and in any conflict between the two, the latter was sure to succumb.

Other causes were also at work to prevent any earnest efforts towards so great a reform as emancipation. Such ardent souls as were not seduced by the temptations of ambition had ample occupation provided for them. Paganism was still but half overthrown and had to be energetically combated, while the great heresies which threatened the existence of the church organization afforded an ample field for religious zeal and aggressive energy. But, more than all, the pure and unselfish were fast yielding to the ascetic spirit which thenceforth was to become the peculiar characteristic of Christianity. Montanism and Catharism, together with oriental influences, of which Manichæism is the most conspicuous example, greatly strengthened the ascetic tendencies which are to be found even in the Gospels. The Saviour had taught us to despise the allurements of earth when weighed against the prospects of Heaven, and to look upon faith and righteousness as the only things worthy of serious endeavor. These teachings were elaborated and exaggerated into a stoicism beyond the reach of Epictetus himself. The believer must devote himself wholly to his own salvation; wife, children, friends must be set aside, and earthly joy and grief must become purely indifferent. Men

possessed with these convictions could not be expected to bestow a thought on the fleeting wrongs and woes of slaves. Even as early as the second century, Tatian boasts of the indifference which he assumes as to freedom or slavery.[1] When the spirit of asceticism became dominant, and when Antony and Pachomius were peopling the deserts with thousands of cenobites, who would stop to pity the fate of a slave whose worst extremes of ill-usage were luxury compared with the frantic hardships self-inflicted by those saintly men?

While thus the disposition to interfere with slavery as an institution was weakened among those who controlled the church, the power to do so effectually also was wanting. The "clinical baptism" of Constantine shows that worldly motives had at least a part with religious conviction in producing his conversion. He sought to consolidate his power and to found a dynasty. The Christians were active and hopeful, and were daily growing more numerous, and it was safer to side with the growing than with the declining religion. Yet the reaction under Julian shows that parties were not so unequally balanced as to render it safe for him unnecessarily to irritate those whom he had deserted. A general emancipation of the slaves would have produced a social convulsion most dangerous to his own power and to the prospects of his dynasty, and Constantine would have turned a deaf ear to any suggestions of impolitic fanaticism. Without him the church could do nothing. The emperor was its ruler in all things temporal, and temporal things merged so imperceptibly into spiritual, that even in the latter he was virtually supreme.

These various causes were amply sufficient to prevent any general measures tending directly or remotely to emancipation, and yet the influence of Christianity was not long in making itself felt on the spirit of legislation. Almost immediately after his conversion Constantine issued an edict, which was evidently suggested by his priestly advisers, and which was destined to have a powerful effect on the progress of freedom.

[1] Tatiani Assyr. Orat. contra Græcos.

Besides the old forms of manumission known to the Roman law, he introduced a new one, by which a slave could be liberated at the altar, in presence of the bishop, on the simple execution of a paper testifying to the fact. Subsequent laws, in 316 and 321, extended and perfected the system, under which citizenship was conferred on all slaves thus manumitted; and, as a peculiar favor, ecclesiastics were permitted to enfranchise their bondsmen by a simple declaration, and without either witnesses or writings.[1] Not only were many of the obstacles formerly thrown in the way of manumission thus removed, but the influence of religion was declared to be altogether in favor of liberty. The law was so understood, and, a hundred years later, Sozomen refers to it as a conspicuous illustration of Constantine's piety and Christian fervor. So thoroughly, indeed, had it thus become identified with freedom, that it was customarily inscribed at the head of all deeds of manumission:[2] and in process of time, as we shall see, it enabled the church to become the especial patron and protector of freedom.

That the church itself took a lively practical interest in the matter is not simply conjectural, for, at the commencement of the fifth century, the bishops of Africa sent a special mission to Rome to ask that the custom might be extended to their province, which, apparently, had not been included in the legislation of Constantine.[3] How much the manumission of a slave was held by the ecclesiastical authorities to be an act acceptable to God is also shown in the custom which led to the performances of the ceremony during the solemnities of Easter, along with other charitable works.[4]

[1] Const. 1, 2. Cod. I. xiii.—Lib. IV. Cod. Theod. vii. 1.—It is a noteworthy fact that a formula for manumission at the altar in Germany, at the commencement of the tenth century, drawn up to conform to a capitulary issued by Louis le Débonnaire in 816, shows the profound impressions left by the imperial jurisprudence in declaring that the slave thus set free shall enjoy all the privileges of freedom "sicut alii cives Romani." —Reginon. Prumens. Canon. Lib. I. cap. ccci.

[2] Sozomen. Hist. Eccles. I. ix.

[3] Concil. Carthag. ann. 401, can. 7, 17.

[4] Gregor. Nyssens. Orat. 3 de Resur. Christ. (ap. Gothofred.).

These regulations were followed by various laws favoring liberty and ameliorating the condition of the slave. A constitution of 314, strengthened by one in 323, declared that no lapse of time conferred prescription on an owner who had bought or brought up a freeman as a slave.[1] Another law, of which the exact date is doubtful, sought to prevent one of the most cruel wrongs of slavery, by forbidding all separation of families in the division of estates, "for who," says the emperor, "can endure that children shall be torn from their parents, sisters from their brothers, or wives from their husbands?" Those who had thus abused their power were ordered to reunite the severed kindred, and the magistrates were commanded to see that in future no cause should be given for complaints on the subject.[2] One of the disabilities attaching to the servile condition was that no one whose liberty was assailed in court could defend himself, since, if he failed to prove his freedom, he would have been engaged in a legal contest with his master, which the law regarded as an inadmissible incongruity. Therefore, in all such cases, the defendant was obliged to appear by an "assertor," and it was not always easy for him to obtain a freeman to perform this friendly office. In 322 Constantine issued an edict which greatly enlarged the facilities for procuring a sponsor of this kind, and which moreover inflicted severe penalties on the claimant if he failed to prove his asserted right.[3] The life of the slave was further protected by edicts in 319 and 326, far in advance of the humane legislation of the Antonines, for they denounced as guilty of homicide the master who should wantonly, or intentionally, or by any cruel or unusual punishment cause the death of a bondsman.[4] A blow, though an ineffectual one, was also struck at one of the worst abuses of Roman slavery, by a law which prohibited the gladiatorial profession, whether assumed voluntarily or enforced.[5] A law of 329, moreover, revives the ancient pro-

[1] Lib. iv. Cod. Theod. viii. 2.—Const. 3. Cod. vii. xxii.
[2] Lib. ii. Cod. Theod. xxv.
[3] Lib. iv. Cod. Theod. viii. 1.
[4] Lib. iv. Cod. Theod. ix. 1, 2.
[5] Lib. xv. Cod. Theod. xii. 1.

vision that an infant sold into slavery by those too poor to bring it up could always be redeemed at a fair price ;[1] and if, in 331, he modified the rule of Trajan which enabled a foundling brought up as a slave to claim his freedom, it was for the purpose of encouraging the preservation of the numerous unfortunates exposed in consequence of the misery of their parents.[2]

These regulations went far towards recognizing the slave as a human being, entitled to legal guarantees, and they removed some of the more abhorrent features of the Roman slave code. Yet Constantine was by no means consistent in this, and his legislation varied, as perhaps the Christian or the Pagan parties predominated. Thus some of his laws maintain with extreme jealousy the rights of masters and patrons, and the worst of class distinctions. An edict of 314 rendered still more severe the odious *Senatusconsultum Claudianum*, which condemned to slavery a freewoman with her offspring, who voluntarily connected herself with a slave, for it abrogated the necessity of three preliminary warnings to the wretched wife.[3] In 317 he restored the warnings,[4] and in 320 he introduced a relaxation in favor of fiscal slaves, whose wives might be free, and whose children be *Latini*.[5] In 326, however, he issued an edict of great severity, by which a woman connecting herself with her own slave was put to death, and her accomplice burnt, while the children of such a union were reduced to simple freedom, without rank or honors or capacity of inheritance; and even slaves were not only permitted to bring accusations of this kind against their mistresses, but were encouraged to do so by the offer of freedom.[6] The children of a female slave were always slaves, even when the father was the master, and in 321 Constantine declared that the sixteen years' prescription which conferred freedom was not applicable to cases where a freeman had offspring by a slave and

[1] Lib. v. Cod. Theod. vii. 1.
[2] Lib. v. Cod. Theod. vii. 1.
[3] Lib. iv. Cod. Theod. ix. 1.
[4] Lib. iv. Cod. Theod. ix. 2.
[5] Lib. iv. Cod. Theod. ix. 3.
[6] Lib. ix. Cod. Theod. ix. 1.

brought them up with him as free. To them no length of time could bar the claim of the father or of his heirs.[1] The control of the patron over his freedmen was likewise guarded by the same careful legislation, and a law of 332 remanded the latter to slavery for slight and almost indefinable offences against the former master.[2]

Between Constantine and Justinian little was done by the emperors to ameliorate the legal condition of the slave; indeed, a considerable portion of the legislation of the period manifests a tendency to reaction, as though to repress an increasing popular feeling in favor of liberty. Thus, the severe Claudian law was re-enacted by Julian the Apostate, and again in 366 by Valentinian I., and the servitude of the children of such unions was specially decreed by the latter. It is true that Arcadius in 398 restored the practice of giving the unfortunate victim three warnings before final proceedings could be taken against her;[3] but in 468 Anthemius went further than his predecessors by prohibiting marriages between freewomen and their freedmen, under pain of deportation and confiscation of property, while the offspring were seized as slaves of the fisc.[4]

In the same spirit, the dependence of the freedman on his patron was enforced by successive edicts. By a law of Honorius in 423 the relationship was even continued to the second generation of both parties.[5] In 376, Gratian denounced the most savage penalties against freedmen who brought accusations against their patrons; except in cases of treason they were not to be listened to, and their ingratitude was to be punished by the stake.[6] In 397, Arcadius contented himself with threatening a less cruel death,[7] and in 423, Honorius pronounced them incapable of bearing witness against their patrons, and declared that they should not be called upon to give evidence of that nature.[8] In 426, a law of Theodosius the

[1] Lib. IV. Cod. Theod. viii. 3.
[2] Lib. IV. Cod. Theod. xi. 2.
[3] Lib. IV. Cod. Theod. x. 4, 5, 6, 7.
[4] Novell. Anthem. Tit. I.
[5] Lib. IV. Cod. Theod. xi. 2.
[6] Lib. IX. Cod. Theod. vi. 1, 2.
[7] Lib. IX. Cod. Theod. vi. 3.
[8] Lib. IX. Cod. Theod. vi. 4.

Younger and Valentinian II. prohibited them from aspiring to any honors in the state, and ordered that even the rendering of military service should not exonerate them from being reduced to slavery if guilty of ingratitude to the patron or his heirs.[1]

This frequent repetition and enactment of laws is strikingly suggestive of a growing public opinion which rendered them rapidly nugatory. It would seem that this feeling at length grew powerful enough to overcome the prejudices of the rulers, for in 447 Theodosius and Valentinian issued an edict strongly in contrast with their legislation of 426. It expressly prohibited the heirs of a patron from endeavoring to reduce his freedmen to slavery; and, while it granted remedies against ingratitude, it annulled the ancient "actio contra ingratos" which remanded the freedman to his servile condition. It further gave him a much larger control than he had previously enjoyed over the testamentary disposition of his property, and even when he died intestate and without issue, the heirs of his patron could only claim one-half of his estate. These provisions, the monarchs declared, arose from their detestation of injustice and their leaning in favor of liberty.[2]

Whatever alleviations the lot of the slave received during this period, either from the legislation of the rulers or the growth of public opinion, may reasonably be attributed to the influence of the church. That the church, indeed, was looked upon as the natural protector of the slave, that religion favored his emancipation, and that his liberation was regarded as an act acceptable to God, is sufficiently proved by several laws enacted about this time. Thus, in a constitution of Theodosius the Great, the sanctity of Sunday was enforced by forbidding any legal process or act on that day, but manumission was specially excepted; it was a work of charity, and therefore no violation of religious observance.[3] Somewhat in the same

[1] Lib. IV. Cod. Theod. xi. 3.
[2] Novell. Valent. III. Tit. xxv.
[3] Const. 2 Cod. III. xii.

spirit was a rescript of Theodosius the Younger, setting at liberty any Christian slave circumcised by a Jewish master.[1] Religion likewise led to the suppression of one of the worst abuses of slavery, when Constantius in 313 declared that any Christian slave sold to prostitution could be forcibly redeemed at a fair price by any priest or Christian man of good character;[2] and this reform was carried out to its legitimate result in 428, by Theodosius the Younger, in a law which set at liberty any slave girl employed for such purposes, and doomed to exile and the mines any master guilty of a wrong which in the early days of the empire was recognized as a regular occupation and source of legitimate profit.[3] So decided an interference with the rights and powers of slave-owners betokened a steady advance in the direction of liberty.

Not only did religion thus use its influence in favor of the slave, but the church became the legalized intercessor between him and his master. It thus employed its right of asylum, and in 432 it obtained from Theodosius the Younger a rescript which established it in this position. Any slave flying from his master's wrath could take refuge in a church. After a sojourn of twenty-four hours the priests were bound to notify the master, who could not withdraw the fugitive until he had pledged himself to a full pardon—though to prevent abuse the slave was required to be unarmed, for if armed the master could seize him by force, and was held harmless for any bloodshed which might ensue.[4] The right of shelter thus obtained by the church was quickly extended. The limit of twenty-four hours was not observed; the slave was retained until the owner could satisfy the clergy, and if he subsequently violated his promises of forgiveness, he was promptly excommunicated.[5] Some

[1] Const. 1 Cod. I. x. [2] Lib. xv. Cod. Theod. viii. 1.

[3] Lib. xv. Cod. Theod. viij. 2.—Cf. Const. 12, 14 Cod. I. iv. In 394 Arcadius and Honorius had forbidden Christian women and boys from being put upon the stage.—Lib. xv. Cod. Theod. vii. 12.

[4] Lib. IX. Cod. Theod. xlv. 5.

[5] Concil. Arausican. I. ann. 441 can. 5. — Concil. Arelatens. II. ann. 443 can. 2.

masters were inclined to regard this as a palpable violation of their rights, and cases occurred in which they sought redress by seizing the slaves of the church to replace those who were thus detained, but the church did not shrink from the conflict thus provoked, and condemned all such sacrilegious offenders with its most awful anathema.[1]

Such was the position of slavery when the Western Empire was overthrown by the Barbarians, limiting at once and for ages the humanizing influences which were gradually undermining the institution. Before considering the effects produced by this revulsion, it will be well to glance for a moment at the legislation of the East, where, for a while at least, the progress of reform continued with comparatively little interference from external causes.

The legists whom Justinian assembled to the great work of revising and codifying the imperial jurisprudence were thoroughly imbued with the love of freedom, and the emperor himself lost no fitting opportunity of proclaiming his favor for liberty and his detestation of slavery.[2] His legislation, therefore, is all directed in the interests of the slave and of the freedman. The door was thrown open as wide as possible for the manumission of the former, while everything was done to elevate the latter from his dubious position.

Thus a presumed slave, either claiming or defending his liberty, was allowed to appear in person against his master, without the intervention of the "assertor". He was thus given a standing in court equal to that of his master, and was removed altogether from the category of mere chattels.[3] Successive edicts abolished all the restrictions upon manumission, as distinguished from other legal acts, arising from either the age of

[1] Concil. Arausican. I. can. 6.

[2] "Nos fautores libertatis."—Const. 2 Cod. VII. vii. "Qui etiam dudum servientium manumissores esse festinavimus."—Novell. XXII. cap 8.

Const. 1 Cod. VII. xvii.

the master or that of the slave.[1] The L. *Furia Canina*, which limited the number of slaves to be liberated by will, was repealed.[2] All doubtful questions were decided in favor of freedom,[3] and this was carried so far as to entrench upon the undoubted rights of masters. Thus when a slave belonged to several owners in common, and one of them desired to liberate him, the rest were obliged to sell out their shares at a price fixed by law;[4] and if one of the shareholders in dying left his share to the slave himself, it was held that he intended to set the bondman free, and the heirs were forced to purchase the other shares and manumit him.[5] If a man had children by a female slave and died without making special disposition of them, the mother and her offspring were all set free.[6] In the same spirit, if a man called his slave his son in any legal act, the slave was emancipated, whether the paternity was a fact, or the words were only used as an expression of affection.[7] The funerals of wealthy men were frequently attended by crowds of slaves wearing caps—the emblem of freedom—who were ostentatiously displayed as though they were freedmen set at liberty by the posthumous charity of the deceased. Justinian took advantage of this by declaring that any slave who at his master's funeral and in presence of the heirs stood at the bier, or walked in the procession with a cap, was emancipated by the act.[8]

The laws concerning marriages between slaves and free persons were thoroughly reformed. The cruel *Senatusconsultum Claudianum* was stigmatized as barbarous and was repealed. Neither a freewoman nor a freedwoman was liable to forfeit her liberty by connection with a slave, though in such cases the slave was subjected to punishment at the hand of his master or of a magistrate.[9] If a man married a slave thinking her to be

[1] Const. 4 Cod. VII. xi.—Novell. CXIX. cap. 2.—Const. 2 Cod. VII. xv.
[2] Cod. VII. iii.
[3] See Const. 14, 16, 17 Cod. VII. iv.
[4] Const. 1 Cod. VII. vii.
[5] Const. 2 Cod. VII. vii.
[6] Const. 3 Cod. VII. xv.
[7] Const. 1 § 10 Cod. VII. vi.
[8] Const. 1 § 5 Cod. VII. vi.
[9] Cod. VII. xxiv.

free, the marriage was annulled and the parties were separated;[1] but if the master of the slave had connived at the deception, the slave became free, and the marriage held good,[2] or if the master had given her in marriage with a dower, she was, *ipso facto*, declared free.[3]

Penal servitude, which entailed dissolution of marriage, was abolished. No man could be reduced from freedom to slavery, nor could marriage be dissolved on any such pretext.[4]

Although Justinian preserved the *L. Aelia Sentia*, in so far as it prevented testamentary manumissions in defraud of creditors,[5] still the careful provisions of his laws on this subject manifest extreme solicitude to secure the liberation of as many slaves as possible in the settlement of insolvent estates.[6]

In the misery attendant upon the decline of the empire, the exposure or sale of new-born children by parents unable to support them was an evil of constantly increasing magnitude. Constantine, in 331, had permitted the purchaser, or whoever gave shelter and nurture to the foundling, to bring him up either as a slave or a freeman.[7] In 412, Honorius seems to have invoked the interposition of the church in favor of the unfortunate, when he required all such cases to be registered by the bishop of the locality.[8] Justinian, however, changed the whole nature of the law, for he declared, in 529, that all foundlings, whether sprung from free or servile parentage, should be freemen, and that no rights of ownership should accrue to those who might adopt or bring them up.[9]

Favorable as was all this legislation to the slave, the laws of Justinian respecting freedmen were not less liberal and enlightened. The old classification, introduced by Augustus, was abolished. Justinian declares that the *dedititii* enjoyed an empty mockery of liberty not endurable in his system of

[1] Novell. XXII. cap. X.
[2] Novell. XXII. cap. XI.
[3] Const. 1 § 9 Cod. VII. VI.
[4] Novell. XXII. cap. VIII.
[5] Const. 5 Cod. VII. II.
[6] Const. 15 Cod. VII. II.
[7] Lib. V. Cod. Theod. VII. 1, also, VIII. 1.
[8] Ibid. VII. 2.
[9] Const. 3 Cod. VIII. LII.

jurisprudence.[1] The freedom of the *Latini* was no freedom, since it was lost at the hour of death.[2] Accordingly he elevated them all to the rank of citizenship, no matter what form might be employed in the act of manumission. In 539 he bestowed on all future freedmen the full rights and privileges of freemen, even to the gold ring which had previously been the mark of birth and station.[3] At the same time he removed all restrictions as to their marriage, and even senators were permitted to marry freedwomen. Marriages with slaves were not allowed; a master must liberate his slave before he could marry her, but if children had been born before such marriage, they were rendered free and capable of inheritance by the legal union of their parents.[4]

The stormy times which followed the reign of Justinian were not favorable to the development of the reforms which he had thus carried so far, while the succession of heresies whose bitter strife constitutes the ecclesiastical history of the East from the fourth to the ninth centuries, left the church little time for exerting its influence in favor of the slave. Rigid churchmen, however, gradually came to regard slave-holding as sinful in ecclesiastics, and to establish for themselves the rule that it was permissible only to the laity. St. Theodore Studita, about the year 790, repeatedly addresses his flock on the subject, and warns them that man, made in the image of his Creator, is not to be reduced to servitude among those who are all servants of the Lord.[5] The gathering clouds of barbarism, however, ere long began to close around the throne of Constantine and Justinian. The empire, wasting by piecemeal and struggling for existence, became more and more corrupt. The savage energy of Islamism prevented its conquerors from yielding to the influences of civilization and of true religion, and while humanity made progress in the West, it sank,

[1] Cod. VII. v.
[2] Const. 1 Cod. VII. vi.
[3] Novell. LXXVII. cap. i. ii.
[4] Novell. LXXVII. cap. iii.
[5] S. Theod. Studit. Serm. CIII.—Ejusd. Testament.

in the East, century by century, into a deeper gloom of barbarism.

The Latin church was eventually more fortunate. The barbaric hordes which swept over the Western Empire and threatened to extinguish forever the light of civilization, succumbed one by one to its influence, and though the church lost much of softness by the transfusion of wild Teutonic blood, yet it preserved the seeds of love and charity which, slowly growing through the centuries, promise to overshadow the earth in the fulness of time.

The new element thus introduced diverted the progress of practical Christianity, and may be said to have postponed for a thousand years the liberation of the slaves of Europe. The attainment of emancipation, indeed, might well appear hopeless when we consider the relationship between master and bondsman among the Barbarian tribes, and reflect that the controlling places in the church soon came to be filled with Frankish and Gothic prelates who carried to their new functions all their ancestral customs and prejudices.

The Barbarians had no such refined perceptions of the inviolability of personal liberty as those which form so remarkable a feature of the Roman law. Even in the wild freedom of their native forests, we learn from Tacitus, that the ruined gamester would frequently place himself as a last, desperate stake, and submit to be sold into perpetual slavery.[1] So, after their conquest of the empire, the path from freedom to slavery was open to all. The criminal unable to pay the fine for his offence might be redeemed by any one who fancied him for a slave, or the starving wretch could sell himself for food and shelter. The number of formulas extant for such transactions show that they were by no means infrequent;[2] and a case recorded in the Senchus Mor, or ancient Irish code, illustrates

[1] Tacit. de Mor. German. cap. xxiv.

[2] Marculf. Formul. Lib. II. No. xxviii.—Marculf. Append. No. xvi. lviii.—Formul. Sirmond. No. x.

the application of the principle among the Feini, or primitive Irish, prior to their conversion by St. Patrick. So complete was the responsibility of kinship that Dorn the mother of Foitline was adjudged in slavery to Fergus Fergletheck, because her son had been concerned in the murder of Eochaidh Belbhuidhe, who was under the protection or guardianship of Fergus.[1]

Slavery as recognized by the Barbarians was of the hardest kind. Tacitus declares that among the primitive Germans the life of the slave was wholly at the disposition of the master, who could slay him from anger or caprice without being called to account in any way.[2] After their settlement in the Roman Empire, all the Leges Barbarorum regard slaves simply as property. They have no protection for themselves, no legal existence indeed, save through the rights of the master or of the law over them. Their only safeguard is the damage which their murder or mutilation may occasion to the owner. Whether the slave be killed or stolen, the loss is the same to the master, and that loss must be made good to him, with perhaps some additional compensation for the wrong inflicted, as in the case of any other malicious mischief perpetrated on his possessions. In some codes this is established at a fixed rate;[3] in others, a variation is introduced arising from the rank of the master;[4] in others, slaves are divided into classes according to their market value, and their homicide is paid for on the basis of the legal tariff;[5] in others, again, the master has the right

[1] Senchus Mor, Vol. I. pp. 65–9 (Hancock's Ed.). In such a case as this, the servitude must have been somewhat less absolute than the ordinary kind, for the tradition proceeds to relate that Dorn was killed by Fergus for ridiculing a blemish on his face, and that Fergus was mulcted in part of his estates for the murder.

[2] Tacit. op. cit. cap. xxv.

[3] L. Salic. (Text I. of Pardessus) Tit. x. § 1; Tit. xxxv. § 6.

[4] Ll. Baioarior. Tit. v. § 18.—Decret. Tassilon. vii.

[5] Ll. Burgundior. Tit. x. The wer-gild varied from 30 to 150 solidi A king's slave, however, was paid for at a higher rate.

of appraising his loss under oath[1]—but in none is there any other notion apparent beyond the fact that the master has suffered a loss in either his dignity or his purse. Under the Salic law, when one slave killed another, the respective masters divided the murderer[2]—either literally, we may presume, or by a pecuniary transaction, as the whim might take them.[3] If a man beat the slave of another so as to cripple him for forty days, a trifling fine paid the owner for the loss of his bondsman's labor.[4] A slave accused of crime was tortured as a matter of course. If no confession was extracted by the legal torment, the prosecutor, by depositing a pledge with the owner, could take him and continue the torture at his pleasure, subject only to the condition that if the poor wretch died on the rack his value must be made good out of the security given.[5] It is significant that provision is made only for accusations brought against slaves by third parties. For their own grievances masters held the law in their own hands, and required no powers beyond the utter irresponsibility of their ownership.

Under such a system the value of a slave was his sole pro-

[1] L. Frision. Tit. i. § 11; Tit. iv. § 1. This code, though later in date than the others, is perhaps the best representative of the primitive customs of the Barbarians.

[2] L. Salic. (Text. i.) Tit. xxxv. § 1. This provision continues through all the recensions of the Salic law, down to the Lex Emendata of Charlemagne, except in one (Text iv. of Pardessus), where it is replaced by a pecuniary indemnity—"Si servus servum vel ancillam occiderit, MALB. *theodilinia*, id est, homicida ille solidos xx. culpabilis judicetur" (Tit. lvi. § 1).

[3] There need be no hesitation in assuming the literal acceptation of this law. In primitive Rome, by the Twelve Tables (Tab. III.), creditors had a right to divide the body of a delinquent debtor; and though commentators have sought to mitigate the harshness of the law by explaining that the unlucky wretch was to be sold and the proceeds divided, yet a passage of Quintilian (Instit. III. vi. 84) shows that originally the right of corporeal division was absolute, until the advance of civilization caused a change.

[4] L. Salic. (Emendat.) Tit. xxxvii. § 4.

[5] L. Salic. (Text. i.) Tit. xl. §§ 3, 4. This is preserved even down to the L. Emendata, Tit. xlii. §§ 3, 4, 5.

tection, and among hordes of wandering or scarcely settled conquerors his value was very small. Thus, among the Salian Franks, the payment for stealing or killing a skilled slave was thirty solidi, while for stealing a tame stag it was thirty-five, or a stud-horse forty-five; for skinning the carcase of a horse without the owner's consent thirty, and for riding another's horse without permission likewise thirty solidi.[1] It is easy from this to see how slender was the safeguard which protected the slave from the cruelty of the freeman or the wanton caprice of the owner.

The only codes which interposed any barrier between the owner and his property were the Wisigothic and the Anglo-Saxon. The Wisigothic laws were founded to a great extent on the Roman jurisprudence, offering in every respect a notable contrast with the barbarian customs of the contemporary tribes, and yet it was not until the year 645 that King Chindaswind issued an edict in which he deplored the frequent murders of slaves by their masters, and forbade it except under sentence of a court. A master wilfully killing his slave was, therefore, to be fined a pound of gold and condemned to perpetual infamy; while a freeman putting to death the slave of another forfeited two of like value and was banished for life.[2] Half a century later, Egiza pursued the reform by condemning the practice of mutilation. Any master or mistress depriving a slave of hand, foot, nose, ears, lips, or eyes, was punished with three years of penitence and exile under the supervision of the bishop of the diocese.[3] The ecclesiastical nature of this penalty suggests the interposition of the church as the cause of this humane policy, and there can be little doubt that this supposition is true. The most civilized of the Barbarians was unques-

[1] L. Salic. (Text. 1.) Tit. xxxv. § 6; Tit. xxxviii. § 1; Tit. xxxiii. § 2; Tit. lxv. § 2; Tit. xxiii. There were in addition the legal expenses and the claim of the fisc on all compositions, which brought up the cost of killing a slave to 75 sol.—Tit. xxxv. § 7.

[2] Ll. Wisigoth. Lib. vi. Tit. v. l. 12.

[3] Ll. Wisigoth. Lib. vi. Tit. v. l. 13.

tionably Theodoric the Ostrogoth, and the code which he drew up for his countrymen when, two centuries earlier, they became masters of Italy, shows how earnestly he endeavored to soften their asperities and to fuse them into a homogeneous nation with the Romans. Yet in his time the church, whether Arian or orthodox, had little influence on the Gothic customs, and the most that Theodoric could do was to give the master of a murdered slave the option of prosecuting the murderer either criminally or civilly, and in the latter case conviction only entailed on the offender a fine of two slaves of like value for the benefit of the master.[1]

The later Anglo-Saxon law regarded the slave as a human being. In Wessex the blood-money of sixty shillings was paid, two-thirds to the kindred of the murdered slave and only one-third to the master.[2] Another law, which probably does not long antedate the Conquest, fines the master who kills his slave, as the latter owes service only, and not life.[3]

These special exceptions are of little moment, and the brutality of this barbarian servitude finds even a stronger expression in the regulations concerning marriages between slaves and freemen. In such unions, the party who was free, whether husband or wife, became enslaved, and the offspring were likewise slaves.[4] By the Ripuarian law, however, a freewoman under such circumstances had the legal privilege of vindicating her character and of escaping servitude by killing her husband —the king or the count offered her a sword and a distaff; if she took the former, she was to slay the audacious serf; if she chose the latter, she became a slave with him.[5] One text of the Salic law provides that if a woman marry a slave all her

[1] Edict. Theodorici cap. 152.

[2] Ll. Henrici I. Tit. lxx. §§ 2, 4—probably excerpted from the laws of Ina, King of Wessex, at the close of the seventh century.

[3] Ejusd. Tit. lxxv. § 3.

[4] L. Ripuar. Tit. lviii. § 11.—L. Salic. Emend. Tit. xiv. §§ vi. xi.—Marculf. Formul. Lib. ii. No. 29.—Formul. Bignon. No. 10.

[5] L. Ripuar. Tit. lviii. § 18.

property is to be confiscated, any of her kindred may kill her without paying blood-money either to the family or to the fisc, any relative giving her bread or other hospitality is fined fifteen solidi, and the husband is put to death by the severest torture.[1] By the Lombard law, a freewoman marrying a slave might be put to death within the year by any of the kindred, and, if they abstained from this, she became a slave of the fisc.[2] So, in the Burgundian code, both parties to such unions were to be killed, but if the family of the woman did not see fit to put her to death, she became a slave of the king.[3] Among the pagan Saxons, whoever married above his station paid for his audacity with his life.[4]

Such was the material upon which the church had now to act, and such were the influences to which it was exposed. To its honor be it said that even while it was striving for its own safety, and dexterously fighting the battle which in time left it master of its conquerors, it never abandoned the helpless multitudes which had no other friend or protector. In those ages of tumult, when Frankish and Gothic warriors not seldom wore the episcopal mitre, we may find frequent instances of selfishness, cases in which personal or class aggrandizement outweighed the precepts of love and charity which the church never ceased to preach, but these human failings should not blind us to the vast influence which was honestly exerted in favor of the oppressed, at times when to make such an effort was to risk that influence itself.

It has been seen that, except among the Wisigoths shortly before their overthrow by the Saracens, and among the Anglo-Saxons of a late period, the owner was absolute master of the life and limb of his slave. There was no court to which the

[1] Leyden MS. (Cap. Extrav. v. of Pardessus).

[2] Ll. Longobard. Lib. II. Tit. ix. l. 2.

[3] L. Burgund. Tit. xxxv. §§ 2, 3. This portion of the Burgundian Code dates from the year 471, and is probably the most ancient of all the Barbarian laws, though by no means the most barbarous.

[4] Adam. Bremens. Hist. Eccles. L. I. cap. 6.

latter could appeal for safety or for redress. The law took no account of him save as his master's chattel. Yet the church stood boldly up between them, and, in the name of a higher law, interposed while the slave was living, and sought to punish after he was dead.

Thus through all those troublous times the church maintained the right of asylum, and forced the half heathen Merovingian to respect the prerogative granted by a forgotten Christian emperor. The savage Frank had to forego his vengeance ere he could win his slave from the shadow of the altar, and if the plighted faith were violated the watchful priest excommunicated him. The fugitive who once reached the sacred porch was secure, as far as the power of the church could bind the minds and souls of men:[1] and when the unconverted Frank or the mocking Arian was concerned, good Catholic security was required for the protection of the slave.[2] The clergy themselves were not excepted, and were taught by suspension and penance to set a good example to their flocks.[3] When, indeed, a slave had been guilty of some atrocious crime, his master was forced only to forego all bodily punishment; the criminal might be disgraced by shaving the head and be brought to a sense of his wrong-doing by onerous tasks.[4] Nor were these simply regulations of ecclesiastical law, for the church exerted its influence and secured from the barbarian law-givers the recognition of its right of asylum to slaves, and procured the penalty of heavy fines for all violations of the privilege.[5]

It was the same with regard to the life of the slave, whose master could no more be called before the tribunals for the slaughter of his bondsman than for that of his ox or his dog. Here again the church interposed its authority and sought

[1] Concil. Aurelianens. I. ann. 511 can. 3.
[2] Concil. Aurelianens. V. ann. 549 can. 22.
[3] Concil. Ilerdens. ann. 523 can. 8.
[4] Concil. Epaonens. ann. 517 can. 39.
[5] Ll. Baioar. Tit. I. cap. vii.

to throw some protection over the despised class. Excommunication or penance for two years was denounced against him who should put his slave to death without the sanction of a court;[1] and though this punishment may seem light, it may be fairly estimated by comparision with the penalty provided by the council of Tribur, in 895, for the wilful murder of priests —the most heinous of offences in the eyes of an ecclesiastic of those turbulent times. The murderer was only condemned to undergo five years of penitence, and then after five years more of exemplary conduct he was restored to full communion.[2] All these regulations, indeed, show how soon the church had accustomed itself to the barbarian carelessness of life. In 305, before the conversion of Constantine, the council of Elvira had adopted a canon to punish jealous mistresses who, in the blind fury of their wrath, might beat their female slaves to death. If the act were done intentionally, seven years of penitence were required to wipe away the sin; if unintentionally, five years.[3]

Nor was it only with respect to life and limb that the church exercised a watchful care over those who had no other friend. In 650, the council of Rouen reminded the faithful that Christ had redeemed with his precious blood the slave as well as the freeman, that he chose his Apostles from the humblest ranks, and that the lofty in pride and station were hateful to God. A stern reproof was administered to those who kept their herdsmen and ploughmen like the beasts of the field, allowing them no religious privileges, and they were admonished that at the last great day they would be held responsible for the souls of their slaves.[4] The same care was manifested by another coun-

[1] Concil. Agathens. ann. 506 can. 62.—Concil. Epaonens. ann. 517.

[2] Concil. Tribur. ann. 895 can. 5.—This comparison is the more legitimate since the canons of Elvira and Agde were repeated as being in full force by the council of Worms in 868 (Concil. Wormat. ann. 868 can. 38, 39).

[3] Concil. Eliberit. ann. 305 can. 5.

[4] Concil. Rotomag. ann. 650 can. 14.

cil, the year previous, in ordering that no slave should be sold beyond the confines of the kingdom, and condemning any international slave trade as contrary to the spirit of Christianity.[1] Frequent prohibitions were launched against the holding of Christian slaves by Jews. In 581 the council of Macon stretched its authority so far as to order that all such could be redeemed or purchased by Christians for twelve solidi each, a price far below their value, and if the owner refused to part with them they were declared free.[2] A few years later Gregory the Great went further and declared free all Christian slaves who might be bought by Jewish masters;[3] he even set free all heathen slaves who declared their intention to be converted to the true faith,[4] and when some Samaritans had purchased heathen slaves and circumcised them, he ordered them to be liberated, expressly forbidding that the masters should receive compensation.[5] It was doubtless in obedience to an impulsion from Gregory that the fourth council of Toledo in 597 was authorized by the royal power to emancipate all slaves held by Jews;[6] for in 599 we find him expressing surprise to the kings of the Franks that in their dominions Jews were allowed to own Christian slaves, for all Christians were members of Christ, and he vigorously demanded that so great an abuse should be promptly put an end to.[7] The Merovingians apparently were not disposed to obey as promptly as the Goths had done; but the church did not abandon the effort, and went as far as it dared in interfering with the imprescriptible rights of masters. In 625 the council of Rheims assumed power to forbid owners, who were obliged to part with their slaves, from selling them to Jews or heathens. All such transactions were pronounced void, and the sellers were excommunicated.[8]

[1] Concil. Cabilonens. ann. 649 can. 9.
[2] Concil. Matiscon. I. ann. 581 can. 16.
[3] Gratiani Decret. I. Dist. LIV. can. xiii.
[4] Ibid. can. xv.
[5] Gregor. PP. I. Regist. Lib. VI. Epist. 33.
[6] Concil. Toletan. IV. ann. 597 can. 66.
[7] Gregor. PP. I. Regist. Lib. IX. Epist. 110.
[8] Concil. Remens. ann. 625 can. 11.

An innovation of even greater boldness is found in the Penitential which passes under the name of Theodore of Canterbury. The claim of the master to the *peculium*, or private earnings of the slaves, had always been recognized by all civil law, and yet this document pronounces the seizure of it as unlawful, commands its restitution when taken, and inflicts for the attempt a penance at the discretion of the priest.[1]

The church did not teach, as some modern Christians have done, that slavery was a blessing. The greatest ecclesiastic of his period, Gregory I., lent the immense weight of his name and influence to the cause of emancipation. In manumitting two slaves of the church, he expressly declares that we do well when we restore to liberty those whom nature created free, and whom the laws of man have reduced to bondage, since the Saviour himself assumed the human form for the purpose of breaking our chains and of redeeming us all from captivity. These pious considerations he asserts to be the motive which prompts him to release the objects of his benevolence—a motive of universal application, and as efficient for the liberation of all slaves as of one.[2] It was, therefore, no misuse of the property of the church to employ it for the redemption of captives. Gregory even authorized the Bishop of Fano to sell the sacred vessels of the altar for this purpose,[3] and the council of Macon, in 585, directs that the tithes shall be used by the priests for this good work, as well as for the relief of the poor.[4] The council of Chalons in 645, indeed, declared that

[1] Theodor. Cantuar. Penitent. cap. xix. § 30. (Thorpe, II. 19.) Cf. Haddan & Stubbs's Councils of Great Britain, I. pp. xiii. xiv.

[2] Gregor. PP. I. Regist. Lib. VI. Epist. 12.—Gregory, however, had three years before bestowed a slave on his counsellor Theodore (Lib. III. Epist. 18), and he was prompt in following up and reclaiming the fugitive slaves of the church (Lib. XII. Epist. 36), showing that he was by no means prepared for the logical application of the principles which he so broadly enunciated.

[3] Ejusd. Lib. VII. Epist. 12, 38.

[4] Concil. Matiscon. II. ann. 585 can. 5.

the liberation of captives was the highest duty of Christians,[1] and the contemporary hagiology shows that the church taught by example as well as by precept.[2] A legend of the period well illustrates the manner in which the populations were trained in the exercise of this practical charity, and how the special interposition of heaven was vouchsafed in its behalf. A woman who concealed her grasping avarice under an appearance of great outward sanctity was in the custom of receiving from the faithful daily offerings to be applied to the redemption of captives, and these contributions she hoarded, in place of applying them to their holy purpose, until she had accumulated an immense treasure. On her death, the pile of gold was discovered cunningly hid away, and the bishop of the place decided that money so iniquitously acquired was polluted. It was accordingly thrown into her coffin and buried with her. For days thereafter the most agonizing shrieks were heard to issue from her tomb, until the people could endure the horror no longer. When the grave was opened, the gold was found molten and running in a fiery stream down the throat of the corpse, which exhaled a sulphurous vapor—a solemn warning of the punishment in store for those who diverted funds from so pious a use.[3] This abuse of Christian charity was sufficiently frequent to extort from St. Patrick a special canon condemning its perpetrators to excommunication and three years penance; and, to prevent its recurrence, he decreed that no one should make collections for the redemption of captives without the special permission of the bishop—thus placing the whole matter under the patronage and protection of the church.[4]

In every way the influence of the church was brought to bear for the liberation of the slave. Men were taught that to

[1] Concil. Cabilonens. ann. 645 can. 9.

[2] See, for instance, Greg. Turon. Hist. Franc. Lib. VI. cap. 8; Lib. VII. cap. 1.

[3] Greg. Turon. de Glor. Martyr. cap. 106.

[4] Abedoc et Ethelvulfi Canon. Lib. XLI. cap. 23.

set free their bondsmen was an act acceptable to God, for which they could expect a return in this world or the next, and both the pure and the selfish impulses of the laity were laboriously enlisted in the cause. That these teachings were not unfruitful is shown by the numerous charters of emancipation and formulas for such acts, which were habitually drafted by ecclesiastics, embodying the principles which they inculcated—and these express almost universally that the slave is set free for the remission of the sins of the master and for the benefit of his soul.[1] How earnestly this was taught and believed is shown by two formulas of the Merovingian period, in which a king, on the birth of a son, sets at liberty three slaves of each sex in every one of his *villas*, to propitiate God and secure the life of his infant.[2] The form of liberation at the altar, instituted by Constantine, was carefully preserved, and the archives of the churches became the records of liberty of those who had been freed in honor of their patron saints;[3] but even when the barbarian form was used, of striking, in the presence of the king, a piece of money from the hand of the slave to be liberated, which conferred the highest grade of freedom, the act was done in the name of God, who was invoked to protect the liberty thus conferred.[4] So, whenever the church succeeded in inducing the abandonment of the atrocious custom which doomed to slavery the woman who married a slave, the owner renounced his rights over her and her children in the name of God and for the pardon of his sins.[5] All

[1] Marculf. Formul. Lib. II. No. 32, 33, 34.—Marculf. Append. No. 13. —Formul. Sirmond. No. 12.—Formul. Bignon. No. 1.—Formul. Lindenbrog. No. 90, 91, 92, 94, 95, 96, etc. These forms were preserved at least until the commencement of the twelfth century. See Reginon. Canon. Lib. I. cap. 402.—Burchard. Lib. II. cap. 30.—Ivon. Carnot. Decret. P. VI. cap. 131.

[2] Marculf. Lib. I. No. 39; Lib. II. 52.

[3] Some of these, extending to the eleventh century, have been printed by Haddan & Stubbs, Councils of Great Britain, I. 676, 688.

[4] Marculf. Lib. I. No. 22.

[5] Formul. Lindenbrog. No. 85.

these, it is true, were mere formulas, but they represent the assiduous teaching which, continued for centuries, gradually ameliorated the condition of the bondsman and eventually rendered servitude impossible.

Yet the church was not unselfish enough to give practical application, even in its own sphere, to the principles which it thus promulgated. Nor, indeed, could this be expected in an age of lawless violence, when the poor and friendless were glad to gain protection at any price, and were in the habit of surrendering themselves as slaves to some powerful neighbor or wealthy monastery. The church held many slaves, and while their treatment in general was sufficiently humane to cause the number to grow by voluntary accretion, yet it had no scruple in asserting vigorously its claims to their ownership. When the papal church granted a slave to a monastery, the dread anathema, involving eternal perdition, was pronounced against any one daring to interfere with the gift;[1] and those who were appointed to take charge of the lands and farms of the church, were especially instructed that it was part of their duty to pursue and recapture fugitive bondsmen.[2] Manumissions, however, were frequent, and, considering all circumstances, were greatly favored.

As the church grew wealthy, the management of its property became a source of no little care and perplexity. Its possessions were peculiarly liable to dilapidation at the hands of unfaithful stewards, and from an early period stringent regulations were found necessary to prevent their alienation by those to whose care they were entrusted. Thus, in 401, a council of Carthage prohibited the bishop from selling any ecclesiastical property of his diocese, except in case of extreme necessity, when the matter was to be submitted to the metropolitan and a certain number of bishops, who examined the

[1] Lib. Diurn. Roman. Pontif. Cap. VII. Tit. xvi. One of the formulas for the gift of a slave, however, provides that he shall be set at liberty after the death of the recipient. (Ibid. Cap. VI. Tit. xvi.)

[2] Ibid. Cap. VI. Tit. v.

circumstances and gave or withheld permission; while, if the urgency would not permit this delay, at least the neighboring bishops had to be called in consultation; and any infraction of this rule was termed a crime against God, for which the offender forfeited his position.[1] A few years earlier, a canon had been promulgated forbidding bishops or priests to give away or sell the property of their dioceses or benefices, and unless they made compensation or restitution their acts were declared invalid. It is a noteworthy fact that an exception was made in favor of slaves whom they emancipated, provided those slaves remained as freedmen of the church and devoted to its service.[2]

It would thus appear that the ecclesiastic in charge of a church was empowered at his discretion to manumit the slaves entrusted to him. In 506 the council of Agde went further than this, and authorized bishops not only to liberate slaves but to endow them with a moderate amount either of money or land, the sole restriction being that if the specified limit of the gift were exceeded, the excess could be recalled after the death of the manumittor.[3] To any one who is familiar with the constant and jealous care exercised to prevent any alienation of ecclesiastical property, this concession in favor of the liberated slave may well appear extraordinary.

It is true that, a few years later, in 517, the council of Epaone prohibited abbots from emancipating the slaves of their monasteries. At this period the life of a monk was assumed to be one of labor, and the reason given for the prohibition was that the idleness of the freedman offered an unpleasant contrast to the toil of the hard-working brethren.[4] A century later, the council of Rheims, in interdicting the posthumous alienation of slaves, did not restrict their manumission.[5]

[1] Cod. Eccles. African. can. 26 (Concil. Carthag. V. can. 4).
[2] Statut. Eccles. Antiq. can. 31 (Concil. Carthag. IV. ann. 398).
[3] Concil. Agathens. ann. 506 can. 8, 49.
[4] Concil. Epaonens. ann. 517 can. 8.
[5] Concil. Remens. ann. 625 can. 13.

In Spain, the subject was one which gave rise to prolonged trouble. The third council of Toledo, in 589, confirmed the right of the bishops to liberate slaves according to the ancient canons;[1] but the abuses committed in some dioceses where the property of the church was dilapidated through carelessness or nepotism created a strong feeling in favor of restricting all episcopal liberalities. In the following year a violent contest arose in the council of Seville over the acts of Gaudentius, late Bishop of Ecija, who had prodigally manumitted slaves or had given them to his kindred, and the decision arrived at was adverse to the freedmen.[2] This seems to have settled the policy of the Gothic church, and it was so established by the fourth council of Toledo, in 597, which stigmatized as robbers of the poor those bishops who manumitted the slaves of the church without rendering an equivalent, and their successors were ordered to reclaim all who had been set free under such circumstances. At the same time, prelates who had benefited their dioceses in any way were allowed to exercise the power of manumission, but the right of patronage over the freedmen and their posterity was carefully reserved.[3] Notwithstanding this formal enunciation of church policy, bishops continued to emancipate, and freedmen endeavored to throw off their allegiance to their holy patron. Until the conquest of Spain by the Saracens, the councils were continually obliged to repeat the canons and devise new modes of protecting the rights of the church against the audacious attempts of the liberated slaves.[4]

If thus jealous of ecclesiastical rights, the church showed itself equally vigilant in defending those of freedmen in gene-

[1] Concil. Toletan. III. ann. 589 can. 6.

[2] Concil. Hispalens. I. ann. 590 can. 1, 2.

[3] Concil. Toletan. IV. ann. 597 can. 67, 68, 69, 70, 71.

[4] Concil. Hispalens. II. ann. 618 can. 8.—Toletan. VI. ann. 638 can. 9, 10.—Toletan. IX. ann. 655 can. 12, 13, 14, 15, 16.—Emeritens. ann. 666 can. 20.—Cæsaraugustan. III. ann. 691 can. 4.

ral. A striking instance of the power which it claimed, and the vigor with which that power was exercised, was furnished by Gregory the Great in 595. A slave who had been emancipated at the altar of the church of Messina married a slave-girl, by whom he had a numerous family, when she was taken from him and sold. Instinctively he went to Rome to lay his wrongs and sorrows before the Vicegerent of Christ. Gregory listened to the story of his humble petitioner, and forthwith dispatched him to Maximian, Bishop of Syracuse, with a letter in which the pontiff enlarged upon the unheard-of cruelty that had been committed. He ordered Maximian at once to have the wife restored to her husband, and to punish those guilty of the crime in such a manner as would avert the anger of God; telling him, moreover, to warn the Bishop of Messina that if such actions were allowed within his jurisdiction without exemplary chastisement, due retribution for them should be visited on his own head.[1] Gregory felt that the church would belie its character and forfeit its claims on human veneration if it should neglect to vindicate the rights of the miserable and oppressed.

The practice of freeing slaves in churches seemed to place them in some sort under ecclesiastical guardianship, and we have already seen that this custom was carefully retained. Indeed, it became universally recognized by law, as the Roman mode of manumission, whether the master released his bondsmen for a specified price or for the remission of his own sins;[2] and thus the church came at length to throw its protecting arm over the whole class. Even before the subversion of the Western Empire, the proceedings of several councils show that this protection was extended over those who were freed by will as well as those manumitted at the altar. Any attempt to remand them to slavery was prohibited under pain of ecclesiastical censure, and patrons who attacked them on the plea of

[1] Gregor. PP. I. Lib. iv. Epist. 12.
[2] L. Ripuarior. Tit. lviii. § 1.

ingratitude were required to proceed in a manner designated by the church.[1]

This was already a bold invasion of the limits of a well-defined and time-honored system of jurisprudence; and in the wild times which followed, amid the clash of conflicting codes and the arbitrary law of the strongest, the church, taking advantage of the breaking down of the old landmarks, made bolder assumptions, and dared even more in favor of a class which had no other guardian. As early as 506 the council of Agde declared that all who had received manumission at the altar should be defended in case of necessity, and it denounced expulsion from the church against those who should illegally oppress them.[2] In 549, two councils, those of Orleans and Clermont, pronounced it a sin against God to reduce to servitude those who had been liberated at the altar for the love of God, and a unanimous resolution was adopted to defend them in all cases, except when they had committed crimes which involved the legal penalty of slavery.[3]

In 585, another step was taken by the council of Macon, which placed the church in the attitude of the recognized guardian of all freedmen, and assumed their quarrels as its own. It threatened damnation on all who should disregard its decrees, declared that it would defend all freedmen against assault on their liberty, and assigned the hearing of all cases in which freedom was involved to the bishops, or to such assessors as they might select to sit with them in judgment—allowing the civil judge to act only when invited thereto by his episcopal brother.[4] In 615, the council of Paris followed this up by arrogating to the ecclesiastical courts all cases in which freedmen were concerned, and threatening excommunication against

[1] Concil. Arausican. I. ann. 441 can. 7.—Concil. Arelatens. II. ann. 443 can. 33, 39.

[2] Concil. Agathens. ann. 506 can. 29.

[3] Concil. Aurelianens. V. ann. 549 can. 7.—Arvernens. II. ann. 549 can. 7.

[4] Concil. Matiscon. II. ann. 585 can. 7.

those who should dare to bring such matters before the lay tribunals, or should refuse to obey a sentence duly pronounced. It moreover declared it to be the duty of all princes to defend the privileges.[1] The value of the privileges thus assumed can scarcely be overrated, especially as the church granted their acknowledgment by the civil power. Clovis II. confirmed the canons of the Paris council, and gave to them the full validity of law;[2] while even the rude Ripuarians admitted the responsibility of ecclesiastics by ordaining the dignitaries of any church in which a slave was set free to testify in his favor, under a heavy penalty, if his liberty should be assailed.[3]

Nor was this all, for the church manifested its practical interest in freedom by its efforts to prevent the enslavement of freemen. Thus in 617 a council at Lyons enjoined the numerous cases in which men were reduced to slavery, without color of justice, and it excommunicated all who should be guilty of attempting so foul a wrong.[4] A similar canon, but couched in even stronger terms, was adopted by the council of Rheims in 625.[5] In the same spirit, another council of the seventh century decreed that when a freeman sold himself to slavery, he could at any time be redeemed by payment of the sum advanced, and further, that when such a slave was married to a free person, the offspring of the union should be free.[6] The church could only have obtained the power thus to contravene the written

[1] Concil. Parisiens. V. ann. 615 can. 5.

[2] Edict. Chlot. II. ann. 615 cap. 7 (Baluz.).

[3] L. Ripuar. Tit. LVIII. § 6.—It is true that selfish motives may probably have had their share in inducing the church to make these efforts. The rapidly developing jurisdiction of the ecclesiastical tribunals was thereby widened, and there were in addition many sources of advantage and profit arising therefrom. Thus, under the Bavarian law, a slave freed at the altar became a freedman of the church, which thus was entitled to his wergild or blood-money (Constit. Tassilon. 10, 11). The Ripuarian law likewise gave to the church certain rights (L. Ripuar. Tit. LVIII. § 4).

[4] Concil. Lugdun. II. ann. 567 can. 5.

[5] Concil. Remens. ann. 625 can. 17.

[6] Concil. loc. incert. can. 14 (Harduin. III. 558).

law by a bold extension of the jurisdiction previously assumed: that it ventured to do so is a striking proof of its eagerness in the cause of freedom, and that it had fairly earned the position of the defender of liberty.

In one respect, the relations between the church and the slave would appear to conflict with the general favor exhibited towards freedom and human equality. By the earlier canons the slave was not to be received into the ranks of either the secular or the regular clergy; if admitted, he was not thereby emancipated, and he could be reclaimed by his master.

That in the times of persecution a slave could not be ordained without his master's consent is not surprising.[1] In a society united in the bonds of love and faith, it may well be assumed that no Christian master would refuse consent or even freedom to any one deemed worthy by the church to be a minister of Christ; while, if the owner were a heathen, the slave ordained without his knowledge or against his wishes would have scanty opportunity of discharging his sacred duties. With the conversion of Constantine came other reasons still more imperative. As a recognized institution, existing and regulated by law, had the church claimed that ordination conferred liberty on the slave, it would have been involved in continued and infinite quarrels with heathen masters, provoking a united and dangerous opposition; while the argument against conferring the ministry on those who still were slaves had more weight than ever. Besides this, there arose a new class of cases in which admission to the church was quite as unadvisable. The rapid rise of monachism about this time afforded an asylum for fugi-

[1] Canon. Apostol. No. 81.—The council of Elvira went even further, prohibiting the ordination of freedmen of lay patrons (Concil Eliberit. ann. 305 can. 80). Yet short of ordination, slavery was in primitive times no bar to positions of honorable dignity and influence in the church. The two female slaves whom Pliny the Younger, when Proconsul of Bithynia under Trajan, amused himself by torturing, were ministræ or deaconesses (C. Plin. Secund. Lib. x. Epist. 97).

tives which, if legalized, would have attracted hordes of untamed and ferocious savages and absconding criminals, as well as those who only sought to escape the harsh treatment of cruel owners.

The church speedily claimed and obtained for its members exemptions of the most valuable character—release from military service and the terrible burdens which were eating out the heart of the republic and rendering in many instances citizenship a curse rather than a privilege. The effort to avoid these by entering the church soon attracted attention, and laws of a comprehensive character were enacted prohibiting clerkship to every one who owed service, whether public or private. Valens, in 365, ordered all who were liable to municipal duties to be sought out and removed from the monasteries, and twelve years later, when the cenobites resisted his attempts to enforce on them his claims for military service, quite a persecution arose.[1] In 398 Arcadius and Honorius found it necessary to prohibit slaves, decurions, curiales, public debtors, etc., from seeking refuge from their obligations by entering the church and assuming clerkship.[2] Slaves could scarcely complain of it as a special hardship when they were merely subjected to the same regulation as classes whose burdens arose from their honors and prominence; yet these rules were constantly transgressed and evaded. In 443 St. Leo deplored that the ranks of the priesthood were crowded with those who were unfitted for it either by birth or education, especially with slaves to whom their masters refused their freedom, and he directs that in future none should be admitted who were bound in any way, without the consent of those who had the right to control them.[3] The church, indeed, was interested in sustaining these laws, for an abuse sprang up by which masters procured the ordination of their slaves in order that they might enjoy the fruits of the benefices occupied by the latter. To prevent this, the Emperor

[1] Lib. XII. Cod. Theod. Tit. i. l. 63.—Hieron. Euseb. Chron. ann. 378.
[2] Lib. IX. Cod. Theod. Tit. xlv. l. 3.
[3] Leon. PP. I. Epist. 4 cap. 1.

Leo I., about the year 470, directed that no slave should be eligible to the priesthood unless liberated for the purpose by his owner.[1] According to a council held about the year 490, the dignity of the priesthood liberated a slave, whether ordained with or without his master's consent, but the diaconate and the lower grades conferred no such privilege, and in such cases the owner was at liberty to reclaim his property. How frequently these rules were evaded is shown by the epistles of Gelasius I.[2]

Refuge in monasteries was frequently sought by slaves to escape their bondage, and after a sojourn more or less prolonged, they returned to the world as freemen. In 451, the council of Chalcedon threatened with excommunication those concerned in admitting to monastic vows slaves without the knowledge of their masters:[3] while the Emperor Leo I. about 470 decided that in such cases the master's consent gave liberty to the slave as long as he remained a monk, but that if he abandoned his monastic life, the owner was at liberty to reclaim him.[4]

In the East this delicate subject was finally settled by Justinian on a basis strongly leaning to the side of freedom. While he positively forbade—"ut non ex hoc venerabili clero injuria fiat"—any *curialis* or public officer to be admitted to clerkship, unless he were already a monk of fifteen years' standing, the emperor showed himself less scrupulous in interfering with private claims, for he ordered that any slave receiving ordination with his master's knowledge should be free and remain in the church; if without the knowledge of the master, then a year only was allowed for his reclamation, and after that he was *ipso facto* free, unless he abandoned the church. *Coloni* or prædial slaves could enter the church, even without their master's permission, subject only to the condition,

[1] Const. 37 Cod. I. iii.

[2] Gratiani Decret. I. Dist. LIV. can. 9, 10, 11, 12.

[3] Concil. Chalced. can. 4.

[4] Const. 38 Cod. I. iii.—Cf. Gregor. PP. I. Regist. Lib. IX. Epist. 37.

required by the public good, of not abandoning their agricultural occupations.[1]

As regards the monastic profession, Justinian was even more liberal. A novitiate of three years was required of all applicants, during which claims upon them could be presented, and after which a novice became a monk, when, if he were a slave, he was lost irrecoverably to his master unless he voluntarily abandoned his convent. Even during the term of probation, however, fugitive slaves were only rendered up on proof of having fled to escape punishment for crime, and on receiving promise of pardon; if of good conversation and nothing were proved against them, the owner's claim was fruitless.[2] Thus the monastic vows effaced the stigma of servitude, and the regulation was for the preservation of conventual purity and not a recognition of the superior claims of property.

In the West the church was unable to obtain legislation so liberal. I have shown how strict, under the Barbarian codes, was the tie which bound the slave to his master, and it can readily be conceived how hopeless must have been the attempt to relax it for the benefit of those who might seek refuge in the cloister or in the ministry of the altar. Slaves were simply property, like asses and swine—somewhat less valuable, indeed, than a stud-horse or a village bull—and the owner could require compensation for his loss, as he could for a fractured finger or any other damage. No one could enter the church without the royal permission, and this permission when given was made dependent upon the postulant owing no service, either public or private.[3] Yet if a slave was ordained through ignorance, the church refused to give him up, and preferred to purchase his liberty at a heavy price. Thus in 511, the council of Orleans provided that a slave ordained without the knowledge of his master must be paid for at twice his value. If the officiating bishop had acted knowingly, he had to pay

[1] Novell. CXXIII. cap. 15, 16 (ann. 541).

[2] Novell. V. cap. 2. (ann. 535).

[3] Marculf. Lib. I. No. 19.

the fine; if not, it fell on those who warranted the postulant or had requested his ordination.[1] Another council, in 538, prohibited the ordination of slaves, and punished a wilful violation of the rule by suspending the officiating bishop from the celebration of mass for a year.[2] These canons do not seem to have been obeyed, for in 549 the prohibition was repeated, but the penalty was reduced to six months; the master could claim his slave, but the latter was only to render such service as comported with the dignity of his order, and if the owner was not satisfied with this, his claim was to be bought off by the bishop giving him two slaves to replace the lost one.[3] The matter was clearly out of the control of the church, and it could only make the best bargian in its power with its half Christianized rulers, while vindicating the principle that the ministry of Christ was inviolable and that its functions were incompatible with the condition of servitude. Where it had full power, as with its own slaves, the rule was laid down by Gregory the Great that all who showed a vocation for the calling should have permission to enter the church, becoming thereupon free and eligible to any station for which they might show themselves fitted.[4]

Such were the relations of the early Christian church with slavery. It was subject to the law; it could not abolish servitude, for in Rome the law emanated from the theoretically

[1] Concil. Aurelian. I. ann. 511 can. 8.

[2] Concil. Aurelian. III. ann. 538 can. 26.

[3] Concil. Aurelian. V. ann. 549 can. 6.—Concil. Arvernens. II. can. 6.

[4] Gratiani Decret. I. Dist. LIV. can. 23. (Gregor. PP. I. Epist. Append. v. Ed. Benedict.)

The rule that ordination conferred freedom was generally admitted throughout the middle ages—Laws of Howel Dda, Dimetian Code, Bk. II. chap. 8, §§ 7, 28 (Owen, Ancient Laws, etc. of Wales, I. 437, 435)—Horne, Myrror of Justice, cap. II. sect. 28.—Lib. I. Extra Tit. xviii. c. 6, etc. Feudalism, however, clung strenuously to its serfs, and the church yielded so far as to prohibit absolutely the ordination of those who were not free.—Post Concil. Lateran. P. XXVI. c. XIX.

autocratic emperor, and among the Barbarian races from an assembly of the nobles, presided over by the monarch. The church could only exercise an indirect and moral influence, and this, as we have seen, was, almost without exception, thrown in favor of the slave. The path to emancipation was widened and rendered more facile; the rights of the freedman were protected, the sufferings of the slave were alleviated. The church stood with its censures between the master and the bondman, as the sole guardian of the lowly and friendless. In the true spirit of the religion of Christ, it brought comfort to the hopeless, and was the refuge of those who had no other earthly support.

Its practice was frequently at variance with its teachings, for human nature is weak, and the sacred character of the priest has never in any age exempted him from the frailty which we all inherit. Yet the aberrations of man, though they might obscure, could not prevail against the principles of the Gospel, and in the long course of centuries the influence of Christianity gradually won the victory over human cupidity and pride. That a man should exercise the absolute despotism of ownership over his fellow-creature has at length been recognized as wrong in itself, and this is not the least of the peculiar characteristics which distinguish our Christian civilization from that of other ages and creeds. When so much has been gained we are fairly justified in anticipating more, and in looking forward hopefully to the time when the universal brotherhood of mankind shall be a practical element in the guidance of life.

INDEX.

ABBEYS in the gift of the sovereign, 102
Absolution and dispensation, 160
commercial value of, 164
death-bed, of debtor, 442
purchase of, 164, 459
compulsory, 461
Abuses of clerical exemption, 193, 208, 220, 224, 228
Abuses of excommunication, 416
Acacius, excommunication of, 139, 286, 293
Accusations of laymen not receivable against clergy, 70
Accuser, unsuccessful, punishment of, 269
Adam, excommunication of, 407
Adam of Locheim, case of, 426
Adrian I. refutes Charlemagne on image worship, 28 *n.*
his grants to Charlemagne, 36, 93, 96 *n.*
adopts the canons of Ingilram, 48
rejects *filii que* from the creed, 65
his contest with Ravenna, 124
produces the donation of Constantine, 165
Adrian II. grants privileges with the pallium, 147
admits Lothair to ordeal, 173
asserts papal supremacy, 175
assumes to dispose of kingdoms, 341
Adrian VI. on papal power, 390
his treatment of the Reformers, 490
Adultery, penitence for, 506
Ælia Sentia (lex) restricts manumission, 532
African church, relations of, to Rome, 123
resists usurpations of Rome in 253, 127
dominated by Innocent I. in 416, 124
vindicates its independence in 419, 133
excommunicates Pope Vigilius in 550, 125
asks for manumission at altar, 543
Agapæ, or love feasts, 240
Agde, council of, in 506, 61, 183, 560, 566, 569
Agobard, St., on image worship, 28 *n*
he aids in degrading the Emperor, 331
he is deposed, 110
Aimery de Maignac, Bishop of Paris, 212
Aird John, his zeal against witchcraft, 501
Aix-la-Chapelle, council of, in 809, 65
in 816, 66
in 836, 108
in 862, 169
Alamanni, wer-gilds of the, 304 *n.*
incestuous marriage among, 320 *n.*
Alaric II., his control over the church, 61
Albigenses, legislation against, 399
Alcuin on the secular power, 63
Aldric of Le Mans, case of, 101
Alexander II. rebukes Gervase of Rheims, 157
Alexander III. forbids accusations between clerks and laymen, 72 *n.*
claims original jurisdiction, 387
refuses to remove interdict, 420
Alexander IV. on clerical concubinage, 159
limits clerical immunity, 207
restricts the interdict, 420 *n.*
Alexander VIII. anathematizes the Declaration of 1682, 472
Alexandria, primacy of, 112
its assaults on Constantinople, 120, 121, 137
its attempted supremacy, 124, 292
its power broken, 293
Alez, synod of, in 1620, 496
Alfonso of Arragon, case of, 384
Alfonso the Wise on clerical immunity, 205
on excom., 407, 417, 435
Alienation of church property forbidden by Odoacer, 18
Allegiance, oath of, required of the clergy, 107
secured by excom., 341
released by excom., 377
Altar, manumission at, in Rome, 543
among Barbarians, 564, 568
asylum for slaves at, 548
among Barbarians, 559
sacred vessels of, sold to redeem captives, 562
Ambrose, St., on the trial of popes, 18
on temporalities, 105 *n.*
on penitence, 254 *n.*
his excom. of Maximus, 282
his opposition to Justina, 282
his rebuke of Valentinian II., 283
his excom. of Theodosius, 284

Ambrose, St.—
on human equality, 538
Amiens, synod of, c. 1275, 425
Anastasius (Emp.), his resistance to Rome, 265
his forged deposition, 132 *n.*
Anastasius II. (Pope), his assertion of Roman supremacy, 125
Anathema, omnipotence of, 370
disregard of, 462
Anathema maranatha, 239
Ancyra, council of, in 314, 285
Andronicus of Pentapolis, his excommunication, 251, 275, 281
Angels, excommunication of, 407
inferior to priests, 388
Angelus (John), his proposition condemned, 390 *n.*
Anglican church, excom. in, 508
abuses of, 511
complaints of the people, 513
decline of, after the Great Rebellion, 519
Anglo-Saxon laws on benefit of clergy, 195
on slavery, 537
Anicetus (Pope) and Polycarp, 113
Animals, excommunication of, 428
Anisola, case of the Abbot of, 189
Anjou, synod of, in 1265, 401, 442
in 1270, 404 *n.*
in 1275, 424
in 1281, 460
Anne, Queen, extends benefit of clergy, 199
Anne of Britanny stops excommunication for debt, 446
Anno of Cologne, canonization of, 355 *n.*
Anselm of Milan deposed, 110
Anthemius prohibits marriage with freedmen, 546
Antioch, its quarrel with Jerusalem, 120
primacy of, 112
restored to communion in 415, 292
council of, in 269, 15, 115
in 341, 99 *n.*, 112, 117, 243, 274, 290
Antonius Pius, his laws on slavery, 536
Antronius Maximus, case of, 527
Ants, excommunication of, 434
Apiarius, case of, 133
Apocrisarii, papal, 22
Apostles, their avoidance of heretics, 238
their teachings of forgiveness, 237
Apostolic Canons (see *Canons*).
Constitutions (see *Constitutions*).
Sees, primacy of, 112, 119
chamber, corruption of, 58 *n.*
Appellate jurisdiction of Constantinople, 138
of Rome, 84 *n.*, 126
not claimed in the primitive church, 126
successfully resisted when first advanced, 127
granted temporarily by council of Sardica, 129
falls into desuetude, 130
Appellate jurisdiction of Rome—
revived by Innocent I., 133
denied by African church, 133
admitted by Gaul, 135
established by Valentinian III., 136
rejected by the East, 137
admitted by Spain, 139
rejected by the Western Barbarians, 140
its recovery attempted with the pallium, 142
Boniface seeks to revive it, 144
the pallium again resorted to, 144
Charlemagne disregards the papal claims, 146
privileges of appeal conceded with the pallium, 146
jurisdiction established by the false decretals, 149
delay in admitting it, 151
established by Nicholas I., 152
case of Rothadus of Soissons, 153
evils attendant upon the system, 155
complaints of the church, 156
denied by the Neapolitan Normans, 158
admitted by the German Emperors, 158
corruptions entailed by it, 159
reform attempted by council of Bâle, 160
evils continue undiminished, 160, 451
Apt council of, in 1365, 445
Aquilia (lex) on murder of slaves. 530, 536
Arabic version of Nicene canons, 117
Aragon, excommunication in, 407
of animals in, 432
Arbitration in the early church, 74
of bishops, 177
enforced by Honorius, 75
Arcadius, forged excommunication and deposition of, 132 *n.*
on ingratitude of freedmen, 546
on marriage of freewomen and slaves, 546
enforces claims of service, 572
d'Argentré, Bertrand, on excommunication for debt, 447
Arian controversy, advantages of, to Rome, 117
Arianism, technical, of Constantine, 167 *n.*
Arith (Wm.) on excom., 436, 439
Arius, his excommunication removed by Constantine, 277
Arles, first council of, in 314, 64, 259, 280
second council, in 443, 99 *n.*, 548, 569
sixth council, in 813, 316 *n.*, 325 *n.*
Armand of Sens, his use of excom., 435
Arnold of Brescia on temporalities, 105
is sacrificed by Frederic I., 39
Arnoul (Emperor), oath of allegiance to him, 43 *n.*
Arnoul of Rheims eludes excom., 339
his imprisonment, 350
Arnoul of Tours and the pallium, 148 *n.*
Arrius Menander on slavery, 525

Arsenius, St., his policy of excommunication, 272
Arson, punishment of, 409
Articles, the 42 and 39, 509
Asceticism in early church, 541
Aspe, valley of, 426
Assembly of Westminster, 518
"Assertor" for slave plaintiff, 544
abrogated by Justinian, 549
Asylum for slaves in churches, 548
among barbarians, 559
in monasteries, 572, 574
Athalaric, his control over the church, 20
encourages immunity of clergy, 181
Athanasius, excommunication by, 281
Attigny, penance of, in 822, 326
Atto of Vercelli asserts immunity of clergy, 73 *n.*
Auditio, in penitence, 254
Audovera supplanted by Fredegonda, 320
Augsburg Confession, excom. in, 491
Augustine, St., on judicial functions of bishops, 75
upholds African independence, 135
on Eucharistic oblation, 241
on the effects of excom., 249
on segregation, 251
affirms excom. of dead, 265
on limitations of excom., 267
on discipline of church, 276
reproves general excom., 311
on proper y in slaves, 538
Augustus punishes evasion of military service, 526
punishes Vedius Pollio, 529
restricts manumission, 532
Aunius punished for cruelty, 527
Aurelian and the See of Antioch, 115
Austria, modern, class equality in, 231
Autonomy of the prim. churches, 113
Autun, synod of, in 1094, 373
Bishop of, maintains clerical immunity, 219
rats of, excommunicated, 430
Auxanius of Arles, receives the pallium, 142
Auxerre, council of, in 578, 185
Avignon, council of, in 1326, 402, 405, 452
in 1337, 443, 452
Azzo of Milan, 358

BADEGESILUS of Le Mans, 79
Bailies, Scottish, subject to kirk-sessions, 500
Bâle, council of, 160, 394, 460
complaints about pallium in, 148 *n.*
condemns the Sachsenspiegel, 413
resorts to sale of indulgences, 483 *n.*
Baltimore, second council of, in 1866, 478
Baluze, on the grant of Adrian, 93 *n.*
Bamberg, synod of, in 1491, 201, 383 *n.*, 459, 462, 483 *n.*
Bangor, quarrel over bishopric of, 104
Bankers, Roman, protected by excommunication, 439
Bankruptcy and perjury, 441
Bankrupts enslaved in Rome, 525
divided among creditors, 555 *n.*
Barbarian laws, their influence on the church, 553
slavery in the, 554
Barbarians, their control over the church, 61
their independence of Rome, 140
they encourage episcopal jurisdiction, 77
troubles of the church with them, 300
Barber of the Châtelet, his functions, 215
Barbers, jury of, 216
Baronius on the grant of Adrian, 93 *n.*
on the Sardican canons, 133 *n.*
on the donation of Louis le Débonnaire, 166 *n.*
Bartholomew a Martyribus, 224
Basil, St., rejects the authority of the West, 118
on segregation of excommunicates, 281
he excommunicates a village, 312 *n.*
Basil (Emp.) enforces *lex talionis*, 273
Basilides, case of, 127
Baudoin Bras de Fer, his appeal to Rome, 162
le Chauve and the Abbey of St. Bertin, 343
Baugency, council of, in 1104, 374
Bavaria, clerical immunity in, 231 *n.*
Bavarian code, appointment of bishops under, 92
on clerical immunity, 185
wer-gilds in the, 301 *n.*
incestuous marriage in, 320 *n.*
slavery in the, 554, 559
Beaumanoir admits clerical immunity, 192 *n.*, 207, 208
on excommunication, 404, 418
Beauvais, interdict of, 420
Belgium, abuse of excomm. in, 477
Belisarius condemns Silverius, 181
Bell, book, and candle, excommunication with, 348, 382
Benedict the Levite, his capitularies, 68
supposed to be the author of the Pseudo-Isidor, 68
on prohibited degrees, 323
on spoliation of the church, 331
Benedict XII. collects debts by excommunication, 443
Benefit of clergy, 177
Beneventum, freedmen of, 541
Benevolences enforced by excom., 373
Berlin, complaint of, 469
Bernabo Visconti disregards clerical immunity, 203
Bernard, St., on segregation of excommunicates, 393
restores an accursed vineyard, 427
anathematizes flies, 428
excommunicates the devil, 429
Bertha, Queen, repudiation of, 373
Berthair, bishop-elect of Chalons, 103
Berthold of Ratisbon, 86 *n.*

Bertin, St., abbey of, quarrel over, 343
Bertolf of Treves objects to pallium sent to Metz, 149
Bertrade of Anjou, her excom., 373
Bertrand of Comminges, miracle by, 428
Bigamous clerks not entitled to immunity, 207, 212, 215
Bigamy prohibited by Lothair I., 321
Bingham, Joseph, on neglect of communion, 519
Bishoprics sold by the Merovingians, 89
appointments under Carlovingians, 95
Bishops, political power of, 52
Frankish, threaten Gregory IV., 68
their power of arbitration in the early church, 74, 177
their sentences enforced, 75
criminal justice intrusted to them exclusively, 85
oath of fidelity required of them, 107
they endeavor to avoid it, 109
empowered to demand extradition, 335
their jurisdiction enforced by the state, 336
relied on by the state to enforce the law, 337
appeals from their decisions to the throne, 339
empowered to coerce incestuous persons, 321, 322
murder of, in Bavarian law, 301 *n.*
immunity of, from accusations, 70
deposed for treason, 110
merely delegates of the papacy, 150 *n.*
reverence paid to them by Constantine, 178
immunity granted them by Constantius, 179
removed by subsequent emperors, 180
restored by Justinian, 181
jurisdiction over clergy granted by Justinian, 182
punished for improper excom., 339
necessity of, in death-bed absolution, 263
their position in Augsburg Confession, 492
election of
originally by people and clergy, 87
intervention of the sovereign, 88
controlled by the Merovingians, 89
the church endeavors to assert its independence, 91
but fails in both France and Spain, 92
appointing power exercised by Charlemagne, 93
and by Louis le Débon, 96
and by the feudatories, 101
admitted by the church up to 850, 97
Bishops, election of—
the church resists the appointing power, 97
the papacy seeks to obtain it, 98, 103
the laity deprived of suffrage, 99
efforts to confine it to the suffragans, 99
customs of the Greek church, 100
confusion under Charles le Chauve, 101
the Metropolitans attempt to gain control, 102, 103
the power absorbed by the papacy, 106 *n.*
Blanche of Castile, law of, 399
provokes an interdict, 420
Blind men, provision for, 197
Blondel exposes the False Decretals, 59
Boerius, Peter, on the Roman curia, 419
Boniface, St., crowns Pepin le Bref, 34
his appointment to see of Mainz, 93
his efforts to extend papal jurisdiction, 144
his troubles with Roman jurisdiction, 155
Boniface I., his election to the papacy, 17
Boniface III. obtains supremacy over Constantinople, 123 *n.*
Boniface VIII. on clerical immunity, 209
grants privilege to Berlin, 395
restricts interdict for debt, 442
Boniface IX., his sale of indulgences, 482 *n.*
Bouiface of Ferentino, 306
Bonosus, case of, 130
Book, use of, in benefit of clergy, 199
Bourbon, Pierre, refused burial, 444
Bracton admits benefit of clergy, 192 *n.*
Braga, Archbishopric of, and the pallium, 148 *n.*
Branding in benefit of clergy, 199
Branks for penitents, 507
Brazil, excom. of ants in, 434
Brethren of the Cross, 30
Brigitta, St., on excommunication, 461
Britanny, excom. for debt in, 446
Counts of, cases of, 308, 401
British church admits clerical immunity, 183
Brixen, synod of, 371
Brochmael of Gwent, his excom., 334
Bruweiler, monks of, sell indulgences, 481 *n.*
Bull "In Cœna Domini," 230, 233
Burdinus, Martin, antipope, 380
Burgundian Laws, slavery in, 554, 558
Burgundians refuse clerical immunity, 183
Burial denied to excommunicates, 377, 380, 422
to bankrupts, 444
Burlesque of excommunication, 402
Byzantine emperors, their control over episcopal nominations, 100

CADIZ, Bishop of, at council of Trent, 106 *n.*
Cæcilianus, trial of, 128
Calixtus I. and Hippolytus, 113
his depravity, 245
Calixtus II., his simony, 57 *n.*
and Thurstan of York, 383
Calvinist doctrine on excom., 494
Calvin's confession of faith, 494
code of discipline, 496
Cambrai, council of, in 1565, 470
Canada, pigeons excom. in, 434
Candle, use of, in excom., 348, 382
Canonization, expenses of, 57 *n.*
Canon law, supremacy of, in the False Decretals, 68
exists only by pleasure of the pope, 390
burned by Luther, 489
Canons, apostolic, on local independence, 116
on participation in the Eucharist, 243
on segregation, 250
Canosa, interview of, 369
Canterbury, archbishop of, in 1293, his petition, 147 *n.*
synod of, in 1640, 513, 515
Capitularies, how enacted, 62
of Benedict the Levite, 68
Captives, redemption of, 562
Carloman (Duke) seeks to reform the church, 315
Carloman (King) relies wholly on the church, 338
Carlovingian legislation, permanence of, 54
traditions, reverence for, in Germany, 408
Carlovingians, struggles between the, 44
Caroline books, 27 *n.*
Carthage, council of, in 348, 274
in 390, 99 *n.*, 263, 275
in 397, 74, 180, 240 *n.*, 241, 245, 263, 267
in 398, 251, 260, 261, 264, 268, 565
in 401, 267, 565
in 419, 267
Castile, opposition to Rome in, 161
Caterpillars, excommunication of, 431
Cautinus, bishop of Clermont, 90
Celestin I., his control over Gallican churches, 135
on denial of communion, 249, 260
Cemetery, interdiction of, 463
Census, enslavement for evading, 526
manumission by inscription in, 531
Chalcedon, council of, in 451, 14, 65, 74, 112, 177, 180, 268, 269, 573
Chalons, council of, in 579, 141
in 645, 562
in 649, 92, 185, 561
in 813, 325 *n.*, 326 *n.*
Charibert, King, his fate, 310
Charlemagne refutes image worship, 27 *n.*
conquers Italy, 36
his donation to the church, 36
grant of Adrian I. to him, 36, 93
Charlemagne—
his control over the papacy, 37
his coronation as emperor, 37
associates Louis le Débonnaire in the empire, 41
his jealousy of sacerdotal interference, 51
permanence of his legislation, 54
his supremacy over the church, 62
adopts one of the Isidorian canons, 73
abolishes the jurisdiction of the bishops, 81
restricts the territorial jurisdiction of the church, 82
exacts military service from church lands, 88
his nomination to bishoprics, 93, 108
he grants the right of election, 96
exacts oaths of fidelity from the clergy, 107
disregards the appellate jurisdiction of Rome, 146
and puts an end to its abuses, 155
his donation to St. Peter, 165
he disregards the donation of Constantine, 165
his matrimonial irregularities, 169
his legislation on clerical immunity, 186
he disregards it in practice, 187
he punishes nobles and bishops indiscriminately, 188
he forbids warfare to clerks, 314
he uses the church as a civilizing agency, 315
his control over the sacraments, 316
he enforces obedience to the church, 317
prohibits incestuous marriages, 322
restrains spoliation of the church, 324
prohibits abuse of excommunication, 325
Charles Martel is appealed to by Gregory II., 23
is offered the kingdom of Italy, 32
his disposal of bishoprics, 92
Charles le Chauve, his tenure of sovereignty, 34 *n.*
his nominations to bishoprics, 97, 101, 102
gives the abbey of St. Martin to Robert le Fort, 102
enlarges eccles. jurisdiction, 85
subjects himself to episcopal jurisdiction, 86
accuses Wenilo of Sens. 110
represses the pretensions of Ravenna, 124
complains of appellate jurisdiction, 155
his connection with divorce of Teutberga, 169, 172
obliged to admit clerical immunity, 190
endeavors to abrogate it, 190
forbids warfare to clerks, 315 *n.*
his extradition treaties, 555
he enforces excommunication, 5

Charles-le Chauve—
he seeks support from the church, 336
he controls excommunication, 338
proclaims the supremacy of Rome, 340
secures his subjects' allegiance by excommunication, 341
Charles le Simple, his right to investitures admitted, 94 *n.*
pardons the murder of Fulk, 344
Charles V. (France) restricts clerical immunity. 212
his laws on excom., 403
on excom. for debt, 442
Charles VII. (France), on clerical immunity, 218
sustains the royal courts, 444
Charles IV. (Emp.), submits to papacy, 40
his acceptance by Clement VI., 168 *n.*
enforces clerical immunity, 201
fine for neglect of excom., 461
Charles V. (Emp.), seeks to reform the church, 223, 467
Charles I. (Engl.), his use of excommunication, 513
Charta de Foresta guaranteed by e communication, 382
Charters, curses attached to, 302
Chartres, council of, in 1325, 481 *n.*
in 1368, 445, 481 *n.*
Chassanée on clerical immunity, 219
on excom. of animals, 430
Châtelet of Paris, cases in the, 213
Chaucer's Pardoner, 482 *n.*
Chiersy, synod of, 96
capitulary of, 103
Childebert II., enforces excom., 313
Children, communion administered to, 243
of excommunicates, 401, 417
in Scotland, 505
exposed, freedom of, 526, 545
Chilperic I., reproved by Gregory of Tours, 185
Chilperic II., extends territorial jurisdiction, 81
Chindaswind, his law on clerical immunity, 183
on murder of slaves, 556
Christ, his spirit of forgiveness, 236, 270
he teaches non-resistance, 523
the pope assimilated to, 389
Christian emperors, their control over the church, 13
Christian slaves of Jews, 548, 561
Christians, early, corruptions among the, 245
Christopher II., of Denmark, laws of, 192 *n.*
Chromatius, case of, 537
Chrysostom, St. John, his condemnation, 132
avenged by Rome, 292
on perdition of excommunicates, 248
he denounces excommunication of the dead, 265
Chrysostom, St. John—
on abuse of excom., 272
he exalts priestly authority, 281
Church, primitive, organization of, 112
its corruption, 245
its subjection to the Christian emperors, 13
and to the barbarians, 61
to Charlemagne, 62
to Louis le Débonnaire, 66
it protects the people, 46 *n.*
necessity of its unity, 52
is invited to interfere between kings and subjects, 342
its unprotected condition at the rise of feudalism, 343
its corruptions in the middle ages, 220, 452, 463
its relations with slavery, 523
its treatment of slaves, 565
Cid (the), proposes to defy the pope, 406 *n.*
Ciruelo on excom. of animals, 432
Citizenship, restrictions on, for freedmen, 533
freedmen admitted to, 552
Civil cases removed from ecclesiastical jurisdiction, 468
Clarendon, constitutions of, 195
Claudius of Turin, 29 *n.*
Claudius (Emp.) restricts liberty of freedmen, 534
punishes murder of infirm slave, 535
Clement III. and William of Scotland, 384
singular excom. by, 435
Clement III., antipope, his election 371
his death, 374
Clement IV., his claim of papal omnipotence, 386
Clement VI. confirms Charles IV., 40, 168 *n.*
Clement VII., limits excommunication for debt, 448
his mildness towards Frederic of Saxony, 490
Clement of Alexandria on marriage ceremony, 318 *n.*
Clergy, benefit of, 177
concubinage of, 155, 159
despotism of the, 222
corruption of the, 220, 245, 452, 463
their separation from the laity, 300
their vices the work of God, 228
Clermont, council of, in 549, 569, 575
in 1095, 373, 481 *n.*
Clotair I. enlarges episcopal jurisdiction. 79
on episcopal elections, 90, 91
excommunicated by St. Nicetius, 311
Clotair II. on episcopal elections, 90
his edict of 615, 185
confirms canons of C. of Paris, 570
Cnut, his laws on benefit of clergy, 195
on excommunication, 397 *n.*
Code of Discipline, Calvinist, 496
Cognac, council of, in 1260, 423

Colloquy of Poissy, 30 *n.*
Cologne remains faithful to Henry IV., 378
council of, in 1266, 410
Coloni, ordination permitted to, 573
Communion, original character of, 239
continues to be a repast, 241
becomes obligatory and frequent, 243
is universally administered, 243
even to the dead, 244
becomes an instrument of coercion, 244
effects of its deprivation, 247
letters of, 278
controlled by Constantine, 277
by Justinian, 273
by Charlemagne, 316, 325
by Charles le Chauve, 338
by royal prerogative, 339
reverence inculcated for it, 308
its disregard by the barbarians, 312
its administration to idiots, 469 *n.*
enforced in Scotland, 502
Concordats of Martin V., 394
of Leo X., 395, 404
of 1863 with S. America, 416
Concubinage encouraged by apellate jurisdiction, 156, 159
by clerical immunity, 220
Confession, auricular, 279
used to enforce segregation, 393
Confiscation of excommunicates, 396
Conrad the Salic disregards clerical immunity, 200
selects Speyer as the imperial burial place, 379 *n.*
Conrad, King of the Romans, 372
Conrad of Ursperg on papal corruptions, 450
Consistories, their power of excommunication, 494
Constance, council of, 84 *n.*, 104 *n.*, 394, 443, 450, 456, 461, 483 *n.*
Constans II. exiles Martin I., 24
Constantine, his control over the church, 13
organizes general councils, 117
donation of, 119 *n.*, 164
appoints Pope Melchiades as judge, 128
his clinical baptism, 167 *n.*
admits episcopal immunity, 178
threatens Athanasius, 179
his control of communion, 276
his laws on manumission, 542
in favor of liberty, 544
adverse to slaves, 545
as to foundlings, 551
Constantine Copronymus, Roman documents dated by, 31
Constantine Pogonatus and the popes, 24
Constantinople, council of, in 381, 16
in 448, 252, 269
in 553, 21, 266
in 839, 271
Constantinopolitan church, rise of, 119
originally under province of Thrace, 119
Constantinopolitan church—
made second to that of Rome, 120
attacked by Eastern churches, 120
temporary triumph of Alexandria, 121
made equal to Rome by council of Chalcedon, 122, 138
Roman supremacy admitted by Phocas, 123, *n.*
wrests Macedonia from Rome, 126
appellate jurisdiction conceded to, 139
quarrel with Rome over Acacius, 139, 286, 293
humiliation of, 296
symbol, the, 64
Constantius persecutes Liberius, 18
his law in favor of episcopal immunity, 179
Constitutiones Siculorum, clerical immunity in, 192 *n.*, 202
excommunication in, 414
Constitutions, Apostolic, reprove litigation, 74
on participation in communion, 243
on abandonment of convicted criminals, 245
on perdition of excommunicates, 248
on segregation, 250
on penitence, 253
on limitations of excom., 266
on lex talionis, 269
rules on excommunication, 278
occupations forbidden in, 279
regulations of slavery in, 537, 538, 539, 540
Contarini (Card.) on papal simony, 58 *n.*
Contumacy, severity of penalty for, 456
a substitute for excommunication, 513, 520
Contumeliosus of Riez, case of, 140, 141
Convocation, Anglican, of 1562, 510
of 1580, 512
Copts, infant communion among, 244 *n.*
Copyright enforced by excom., 435
Cornelia (lex) de sicariis, 536
Cornelius rebuked by Cyprian, 128
Coronation, sacerdotal ministration in, 33
of Charlemagne, 34
of Louis le Débonnaire, 41
of Lothair I., 42
Corporal punishment for excom., 333
as alternative for excom., 256
Corruption in the early church, 245
fostered by appellate jurisdiction, 155
by clerical immunity, 193, 208, 219, 224, 228
Cossa, Balthasar, his usury, 447
Coulanges on religious repasts, 243 *n.*
Councils, their subordination to the state, 14, 63
Courtly toleration for emperors, 286
Creed of Nicæa, altered by Charlemagne, 64
Criminal jurisprudence of church, 255
jurisdiction of kirk-sessions, 499

Criminals assume tonsure as safeguard, 213
clerical immunity for, 199, 208, 219, 224, 228
Cruelty to slaves in Rome, 529
reproved by the church, 539
Crusaders, indulgences for, 481 *n*
extension of debts for, 441
Curia, Roman, greed of the, 55 *n*., 161, 418, 450
infection flowing from it, 391
Curiales not admissible to orders, 573
Curses to protect church property, 302
to protect private property, 437
Cyfeiliawg, Bishop, his use of excommunication, 334
Cyprian and Marcion of Arles, 114
his superscription of epistles, 115
his resistance to Rome, 128
on Eucharistic oblation, 241
on corruption of the church, 246
on perdition of excommunicates, 248
on penitence, 253
on death-bed communion, 260
on excommunication of dead, 264
on violation of excom., 274
on the independence of the churches, 290
Cyril, his attack on Nestorius, 120
his efforts for Alexandrian supremacy, 124

DAGOBERT I appoints Didier of Cahors, 91
threatened by Sulpicius, 307
Damasus, his election to the papacy, 17
false decretals attributed to, 147 *n*.
Damiani, St. Peter, on papal simony, 56 *n*.
prohibits divorce of Henry IV., 356
reproves abuse of excom., 364
Dancing, excommunication for, 508
Dante, on the study of the Decretals, 57
on temporalities of church, 105
Dead, excommunication of the, 264
denied by Leo, Gelasius, and Chrysostom, 264
affirmed by Cyprian, Augustine, and Theophilus, 265
case of Theodore of Mopsuestia, 265
the question remains unsettled, 266
Death-bed communion, importance of, 258
refused for certain offences, 259
essential to salvation, 259
varying practice of the church, 260
ceremonial connected with it, 262
Death-punishment for heresy, 277
Debtors, bankrupt, enslaved, divided, 525, 555
Debts, collection of, by excom., 439
invented by the popes, 439
eagerly adopted by creditors, 441
heirs of bankrupts excom., 442
Debts, collection of, by excom.—
restrained by Boniface VIII., 442
refusal of sepulture to bankrupts, 444
questions arising from inability to pay, 446
efforts to abrogate the system, 446
its uses and abuses, 447
Declaration of 1682, 471
Decretals, the false (see *Forgeries*).
papal, their influence, 55
burnt by Luther, 489
Dedititii, 533
abrogated by Justinian, 551
Degradation of bishops for treason, 110
Degrees, prohibited, in marriage, 319
Denis the Less, his collection of canons, 47
Denmark, clerical immunity in, 192 *n*.
Denunciation, evangelical, 84 *n*.
Denziger, his account of Pseudo-Isidorian theories, 53
Deposition of Louis le Débonnaire, 329
of kings by popes, 363
Descendants of excommunicates, punishment of, 393
Devil, excommunication of, 429
Diego Gelmirez buys an archbishopric, 57 *n*.
excommunication by, 435
Diet of Nürnberg complains of appellate jurisdiction, 160
of clerical immunity, 221
of excommunication, 462
Dimetian Code abolishes ecclesiastical jurisdiction, 80 *n*.
Diocletian prohibits sale of children by parents, 527
Dionysius of Corinth, his epistles, 114
Dios, monastery of, 294
Dioscorus, his quarrel with Constantinople, 120, 121
his tyranny at Alexandria, 125
he excommunicates Leo I., 292
his condemnation, 180
Disabilities of penitents, 256
of excommunicates, 404, 411
Discipline, Calvinist code of, 496
Knox's book of, 498, 504, 505
Dispensation and absolution, 161
Dispensations, papal, scandal of, 164
Disregard of excommunication, 461
Divine right taught by primitive church, 13
by Anglican church, 515
Divorce of Teutberga, 168
Donaldson (Heber), case of, 508
Donation of Constantine, 164
is presented to Charlemagne by Adrian I., 165
is disregarded by Charlemagne, 165
is rejected by Otho III., 167 *n*.
is disregarded by St. Henry II., 167 *n*.
its authenticity assumed by Chr. Wolff, 167 *n*.
criticized by Marsiglio of Padua, 179 *n*.
of Charlemagne, 165

Donation—
of Louis le Débonnaire, 166
Donatists, their heresy, 254
Dorn, murder of, by Fergus, 554 *n.*
Drogo of Metz, appellate power conferred on, 151
Druids, excommunication by the, 245
Duperron, Cardinal, forbids excommunication of animals, 433

EAST, Emperors of, lose control of papacy, 25
Easter, divergence as to observance of, 113
manumission performed at, 543
Eastern bishops, excommunication of, in 256 250
Eastern church (the) and slavery, 549
Ebbo of Rheims, 41, 110, 152, 187, 331
Eberhardt of Salzburg, 424
Ecclesiastical jurisdiction, origin of, 74
supremacy of, 174
over marriage, 321
Ecclesiastics not competent as judges in Wales, 79 *n.*, 82 *n.*
salutes to, enjoined by law, 313
military habits of, 314
protection accorded to, 327
their disregard of excom., 419 *n.*
Ecgbehrt of Trèves, excommunicates swallows, 428
Edward I. abrogates clerical immunity, 196
Edward II., clerical immunity under, 196
on excommunication, 398
Edward III., clerical immunity under, 196
Edward VI. extends benefit of clergy, 198
Egiza punishes mutilation of slaves, 556
Egra, constitution of, 158
Egypt, punishment for slave murder, 530 *n.*
Egyptian bishops, their subjection, 125
Election of bishops (see *Bishops*).
Elections, papal (see *Papal elections*).
Elizabeth, Queen, restricts benefit of clergy, 198
uses excommunication, 511
Elvira, council of, 27 *n.*, 258, 262, 274, 560, 571 *n.*
Emancipation of the state, 474
Emancipation, ceremonies of, in Rome, 527
causes preventing it, 542
regarded as a pious act, 537, 543, 564
Embrun, excommunication of, 421
archbishop of, 103
Emperors, Roman, their autocracy, 13
their power inferior to the church, 281
Empire bestowed on Charlemagne by Leo III., 37
controlled by papacy, 39
Empire, Holy Roman, dependent on the papacy, 40
a fief of the church, 168
Ems, congress of, in 1786, 145 *n.*, 148 *n.*
Encyclical of 1864, 475
England, benefit of clergy in, 194, 195
demand that pallium should be sent to archbishops, 145 *n.*
interdict under John, 381 *n.*
quarterly excommunication in, 382, 397, 457, 458
laws on excommunication, 396
controlled by the king, 398
excom. under Henry VIII., 508
in projected code of Edward V., 509
in the 39 Articles, 509
civil penalties of, under Elizabeth, 510
abuses of, 511
complaints of the people, 514
protest of the Long Parliament, 517
supremacy asserted by it, 518
decline of excommunication, 519
ordination confers freedom, 575 *n.*
Enslavement for injuries to clergy, 73
for debt, 525
for marrying slave, 526, 545, 550, 557, 564
among the Germans, 553
Epaone, council of, in 517, 183, 559, 566
Ephesus, council of, in 341, 14
Robber synod of, 121, 137, 269, 292
Epictetus, stoicism of, 530
Epiphanius of Constantinople submits to Rome, 295
Epirots reduced to slavery, 528
Episcopal elections (see *Bishops*).
oaths, 107, 143
control of coronation, 32 *n*, 38 *n.*
influence in the state, 52
power a delegation from the papacy, 150 *n.*
Equality of slave and master, 539
Erasmus condemns the Bull Exsurge Domine, 487
Ergastulæ, Roman, for slaves, 535
Ermeland, bishop of, his moderation, 491
Ernest of Prag asserts clerical immunity, 210
d'Espeisses on the exactions of Rome, 55 *n.*
Essenes, excom. among the, 245 *n.*
Établissements of St. Louis, 207, 401, 404
Ethiopic Christians, communion among, 244 *n.*
Eucharist, original nature of the, 239
continues to be a repast, 241
is a bond of union, 243
frequency of its administration, 243
veneration rendered to it, 243 *n.*
administered to the dead, 244
becomes an instrument of coercion, 244
effects of its deprivation, 247
decline of reverence for, 248

Eucharist—
administered to the dying, 263
reverence inculcated for, 308
money value of, 325
administration of, to idiots, 469 *n.*
ordeal of, administered to Lothair, 173
Eucharistic blood, excommunication written in, 271
Eugenius II. takes the oath of allegiance, 43
Eugenius IV. on papal power, 390
condemns the Sachsenspiegel, 413
Euphemius, excommunication of, 275, 286, 294
Eusebius of Dorylæum, 17, 269
Eusebius of Nicomedia baptizes Constantine, 167 *n.*
Eutyches, accusation of, 269
his excommunication, 252
his appeal, 137
Eutychianism, proscription of, 296
Evangelical denunciation, 84 *n*
Exactions of the papal court, 55 *n.*, 144, 145, 148 *n.*
Excommunicates, civil disabilities of, 332, 392
exhumation of, 380, 423
number of, 417, 455, 455, 460
unconscious, 458
seizure of, by demons, 462
Excommunication, 235
formulas of, 302, 303, 343, 345, 347, 362, 382, 421
in interest of slaves, 548
Exemptions incident to clerkship, 572
Expulsion from the church, 239, 244
Extradition treaties of 857 and 860, 84
of excommunicates, 335

FABIOLA, her penitence, 254 *n.*
Fabius, his conquest of Tarentum, 528
Faith, questions of, decided by emperor, 64
Fallibility of church, admitted, 388 *n.*
False Decretals, the (see *Forgeries*).
Families, slave, their separation forbidden, 544, 568
Fano, bishop of, prosecuted, 233
Farming of indulgences forbidden, 481 *n.*
Fasting of penitents, 256
Fecht on excommunication, 493
Fees for church services, 425
for removing interdicts, 463
Feini, slavery among the, 554
Felicissimus, case of, 128
Felix of Aptungis, 254
Felix III., his excommunication of Acacius, 139, 286, 293
on reception of excom., 275 *n.*
Ferdinand (Emperor), his remonstrances at Trent, 224, 464
on papal dispensations, 164
Feudalism, its recognition by Charles le Chauve, 336
Feudatories obtain control over bishoprics, 104
Fidelity, oaths of, exacted from bishops, 107, 143
Filioque interpolated in creed, 64
Fines imposed on excom., 400, 403
for neglect of excom., 461, 510
for non-observance of Sunday and communion, 502, 503
Firmilian, his resistance to Rome, 250, 290
Flavianus, murder of, 121
Flies, excommunication of, 429
Florentines hang the bishop of Pisa, 462
Florus Diaconus on episcopal elections, 97
on Modoin of Autun, 190 *n.*
on privileges of church, 301 *n.*
Folcuin, St., of Teroüane, 101
Forchheim, diet of, 370
Forged letters of communion, 274
Forgeries, the,
councils of Sylvester I., 42, 140 *n.*
Ingilram, canons of, 48
Theodosian code, interpolation of, 82
Donation of Constantine, 164
of Charlemagne, 166 *n.*
trial of Sixtus III., 181
Epistles of Innocent I., 132 *n.*, 286 *n.*
of Sylvester I., 181
of Gregory I. on marriage, 319 *n.*, 323
on dethroning kings, 363
Louis le Débonnaire on penalties of excommunication, 363
of Nicene Canons by Leo. I., 122
by Juvenal, of Jerusalem, 121
the False Decretals, 46
disseminated by Riculfus, 48
relations of the See of Mainz to the, 48, 68, 144
discredited by Hincmar, 48 *n.*
theories concerning, 52
influence of, 53
exposed by Blondel, 59
defended by the church, 59
presented to Gregory IV. in 833, 67
attributed to Benedict the Levite, 68
their doctrines of papal supremacy, 69
their doctrines of clerical immunity, 69, 190
of ecclesiastical jurisdiction, 83
of implicit obedience, 86
of immunity from oaths, 109 *n.*
of hierarchical organization, 111
of excommunication, 418
they render the pallium obligatory, 147 *n.*
they insist on papal jurisdiction, 149
are quoted by Wenilo of Sens, 153
are established by Nicholas I., 154, 162

Forgeries, the False Decretals—
papal supremacy asserted by them, 170
prohibit abuse of Eucharistic oblations, 242
prohibit incestuous marriages, 323
enforcement of their principles, 354
Forgery, its continuous use by the church, 49
Formulas of excommunication, 302, 303, 343, 345, 347, 362, 382, 421
Huguenot, 496
Formulas of manumission, 564
Fortunatus of Todi, 306
Foundlings, legislation on, 551
freedom of, 526, 545
Fourre (Adam), case of, 444
France, clerical immunity in, 205
limited in 1563, 230
restricted in 18th century, 231
concordat of Leo X., 395, 404
laws on excommunication, 399
first legal penalties in 1228, 399
legislation of St. Louis, 400
difficulty of enforcement, 401
disregard of excommunication, 402
laws of John II. and Charles V., 403
disabilities of excommunicates, 404
project of reform at Trent, 466
rejects council of Trent, 469
Franche Comté, reception of council of Trent in, 470
Francis I. complains of clerical immunity, 219
limits it, 194 *n.*
limits spiritual jurisdiction, 446
Frankfort, council of, 795, 27 *n.*
Frankish legislation, account of, 62
bishops threaten Gregory IV., 68
Franks admit clerical immunity, 184
Fredegonda murders Pretextatus, 312
supplants Audovera, 320
Frederic Barbarossa sacrifices Arnold of Brescia, 39
reproves the papal pretensions, 40 *n.*
enforces excommunication, 409
Frederic II., his deposition by Innocent IV., 132 *n.*
admits appellate jurisdiction, 158
clerical immunity, 200
limits it, 202
his German laws on excom., 409
his Sicilian laws, 202, 413
Frederic of Cologne resists papal exactions. 55 *n.*
Frederic of Saxony protects Luther, 487
contempt for excommunication at his court. 490
Freedmen protected by the church, 80, 568
numbers of, in Rome, 532
adverse legislation of Augustus. 533
their duties to patrons, 534, 546
admitted to citizenship, 543, 552
favorable laws by Justinian, 551
Freedom, imprescriptible in Rome, 525
Freedom—
easily lost in Germany, 553
defence of by church, 569
Freewomen, their marriage with slaves, 526, 545
Frisia, enforcement of excom. in, 415
Frisian law, slavery in, 555
Fuero Juzgo, episcopal jurisdiction in, 78 *n.*
clerical immunity in, 204
excommunication in, 406
Fulbert of Chartres on the pallium, 148 *n.*
Fulda, Abbey of, extent of its possessions. 88 *n.*
Fulk of Rheims and the bishopric of Chalons, 104
murder of, 343
Furia Canina (lex) restricts manumission, 532
repealed by Justinian, 550

GALL, St., of Clermont, 90
Gallican theory of the jurisdiction of Rome. 154
church, liberties of, 471
Gaudentius of Ecija, his manumission of slaves, 567
Gaul submits to papal supremacy, 136
Gauls, excommunication among, 245
Gelasius I., his definition of the canons, 49
asserts supremacy of Rome, 125, 139, 277
asserts immunity of clergy, 180
denies excom. of dead, 264
on communion with excommunicates, 275
his toleration for the emperors, 286
on homicide of clerks, 328 *n.*
Gentilly, synod of, deprecates image worship, 27 *n.*
Geoffrey Vinsauf on papal power, 387
George of Bamberg, reforms of, 463 *n.*
on interdict, 412
his fees for burial, 425
Germain, St., excom. Charibert, 310
Germans, slavery among, 553
Germany, clerical immunity in, 192 *n.*, 200
laws on excommunication, 408
weight of Carlovingian tradition, 408
laws of Frederic I. and II., 409
the Schwabenspiegel, 410
the Sachsenspiegel, 412
powers conferred on the church, 412
reformation in, 480
complains of indulgences, 483 *n.*
separated from Roman church, 374
manumission at altar, 548, *n.*
Geroch of Reichersperg on adoration, 29 *n.*
on donation of Constantine, 167 *n.*
Gerson on abuse of segregation, 394
on abuse of excommunication, 455
on papal simony, 58
on indulgences, 483 *n.*
on clerical immunity, 218

Gian-Galeazzo Visconti, 203
Gibbon on slave population of Rome, 528
Gildas on segregation, 253 *n.*
Giles of Rheims, case of, 141
Gilo of Sens on quæstuarii, 481 *n.*
Gladiatorial profession prohibited, 544
God invoked to shield clerical vices, 228
Godefroy exposes interpolation in Theodosian code, 83 *n.*
Golden Bull of Frederic II., 158
Golias Episcopus on Roman simony, 56 *n.*
Gontran refuses bribes for bishoprics, 89
enjoins respect for the church, 313
his interference in the case of Salonius, 140
his tyranny towards bishops, 185
Gordon, Nath., his execution, 505
Goteirido of Milau, 358
Gracchus (T. Semp.) liberates slaves, 532 *n.*
Grágás, the earliest Icelandic code, 69 *n.*, 79 *n.*
Gratian. Emperor, grants appellate power to Rome, 130
withholds it in 381, 131
his law on capital sentences, 285 *n.*
on ingratitude of freedmen, 546
Gratian, letters of communion in his Decretum, 274 *n.*
Gregory I., his submission to the secular power, 22, 23
he reproves Serenus of Marseilles, 27 *n.*
he protects the widow and orphan, 80
on the title of Œcumenic Patriarch, 122
he bestows pallium on Virgil of Arles, 142
he maintains clerical immunity, 182
on prohibited degrees, 319
on power to inflict penitence, 261
he excommunicates Maximus of Spalatro, 298
his free use of excommunication, 303
he condemns its abuse, 304
his explanation as to miracles, 305 *n.*
he acknowledges the fifth general council, 266
forged decretals attributed to, 319 *n.*, 323, 363
on Christian slaves held by Jews, 561
his opposition to slavery, 562
his protection of freedmen, 568
Gregory II. renders the papacy independent, 25
appeals to Charles Martel, 26
Gregory III. seeks the Frankish alliance, 31
on death-bed communion, 263 *n.*
prohibits marriage in seventh degree, 320
Gregory IV. submits his election to Louis le Débonnaire, 44
Gregory IV.—
he aids the rebellious sons of Louis, 67
is driven back to Rome, 68
on oaths of allegiance, 107
is threatened with excommunication, 171 *n.*
epistle attributed to, 151
Gregory VII. on subordination of the empire, 34 *n.*
insists on the use of pallium, 148 *n.*
he raises the question of the investitures, 357
his struggle with Henry IV., 359
his death, 371
Gregory IX. and clerical concubinage, 159
on excommunication, 410
excommunicates Frederic II., 423
Gregory X. makes Rodolph of Hapsburg emperor, 39
Gregory XI., his quarrel with the Visconti, 203
condemns the Sachsenspiegel, 413
ex om. the Florentines, 417
Gregory XIII. approves the Salzburg Code, 227
condemns infant communion, 244 *n.*
reproves ecclesiastical abuses, 469
Gregory Thaumaturgus on corruptions in the church, 246
on the four stages of penitence, 253
investigation ordered by, 279
Gregory of Nazianzum, 118
Gregory of Tours, his relics, 308
he reproves Chilperic I., 184
Gregory (St.) of Ostia, 433
Grindal, Archbishop, on excom., 512
Gro teste, Robert, on papal avarice, 56 *n.*
Guardianship forbidden to ecclesiastics, 261
Guillaume Bonne-Ame and the pallium. 148 *n.*
Guiscard, Robert, his hostility to Gregory VII., 360
assists Gregory, 371
Gunthair of Cologne procures the divorce of Teutberga, 169
is condemned by Rome, 170
refuses to submit, 171
is deposed by Lothair, 171
Guthrie, Bishop of Moray, his excommunication, 504
Guy of Lombardy, his election, 45 *n.*

HADRIAN, his laws on slavery, 535
Hale, Sir M., on benefit of clergy, 199
Hall, bishop of Exeter, his impeachment, 517
Ham, bondage of his posterity, 538
Harden-gown for penitents, 506
Harrison, Cuthbert, case of, 519
Harvests protected by excom., 439
Heirs of bankrupt, excom. of, 442
Henoticon of Zeno, 293
Henry II. (St.) disregards the donation of Constantine, 167 *n.*

Henry IV. (Emp.) on clerical immunity, 193
his minority, 355
his quarrel with the papacy, 357
his excommunication, 362
his submission, 369
exchanges depositions with Gregory VII., 371
recovers his power, 372
his dethronement, 377
his death, 379
Henry V. (Emp.) on temporalities, 105
rebels against his father, 377
digs up his father's body, 380
extorts abandonment of investitures, 380
submits to Rome, 380
Henry I. (England), his laws on excommunication, 396 *n.*
his punishment for contumacy, 383
Henry VI. (England), his canonization negotiated for, 57 *n.*
his regulations respecting clerical immunity, 218
Henry VII. (England) his laws on benefit of clergy, 197
Henry VIII. (England) limits benefit of clergy, 198
abolishes quarterly cursing, 457
retains the power of the church, 508
Henry III. (Castile), his resistance to Rome, 106 *n.*
Henry IV. (France) refuses to publish the council of Trent, 469
Henry of Salzburg on clerical corruption, 220
Heraclius of Saintes, 91
Heresy of disregarding excommunication, 375, 467
debt is not, 447
Heretics, persecution of, 275
in Anglican church, 516
Hermann, King of the Romans, 371
Hervey of Rheims excommunicates Winemar, 343
Hierarchy, organization of, 278
Hilary of Arles, his quarrel with Leo I., 136
Hilary, Pope, his activity, 139
Hildegarda (Emp.), her efforts to obtain the bestowal of a bishopric, 96
Hildegarda (St.) on corruption of church, 454
Hincmar discredits Ingilram and Isidor, 48
he rejects papal epistles, 50
on royal nominations of bishops, 97
his rigor in episcopal elections, 102
on the appointment of bishops, 103
oath exacted from, 109
interposes between Metz and Treves, 149
he applies for pallium, 152
he resists the appellate jurisdiction of Rome, 154
his disapprobation of papal invective. 172 *n.*
he claims clerical immunity, 191
he ridicules papal assumptions, 341
Hincmar of Laon, case of, 191
Hippolytus and Calixtus I., 113
Holidays for slaves, 540
Holy Ghost, procession of, 64
Homicide of ecclesiastics, 327, 560
of slaves, 529, 536, 544, 554, 556, 557, 559, 560
Honorius (Emp.) intervenes in papal contests, 17
enforces arbitration of bishops, 75
but limits their jurisdiction, 76
his law in favor of episcopal immunity, 179
on duties of freedmen, 546
on foundlings, 551
Honorius III. on subjection of the empire, 33 *n.*
Honorius of Autun on imperial elections, 35 *n.*
Hormisdas, his triumph over Constantinople, 295
his inflexibility, 296
Hospitality enjoined by law, 338
Howell Dda, admits benefit of clergy, 192 *n.*
Hugh of Gapençais, case of, 373
Hugh of Lyons excommunicates Philip of France, 373
Huguenots discourage litigation, 75
excommunication among, 494
Humbert of Vienne excommunicated for debt. 443
Hungary, pre-eminence of bishops in, 35 *n.*
clerical immunity in, 192 *n.*
excommunication in, 416
Huss, his views on excom., 480
on indulgences, 482 *n.*
Hussites seek to abolish clerical immunity, 220
Hyacinth, Brother, case of, 472

IBAS of Edessa, case of, 268
Iceland, supremacy of canon law in. 69 *n.*
ecclesiastical jurisdiction in, 80 *n.*
clerical immunity not admitted in, 193 *n*
spiritual affinity in, 320 *n.*
burial refused to excom., 423
fees for church services, 423 *n.*
spiritual penalties not used in, 449 *n*
Idiots, communion for, 469 *n.*
Ignatius (St.) on Christian marriage, 319 *n.*
on treatment of slaves, 539
Illyricum, quarrel over churches of, 125
Image-worship condemned by the West, 27 *n.*
modern doctrine on, 31 *n.*
Immunity of the clergy, 69
clerical (see *Benefit of Clergy*).
Imperial control over councils, 16
council the tribunal for the pope, 18
crown bestowed by the popes, 39
consent requisite for the pallium, 142

Impunity conferred by clerical immunity, 193, 208, 220, 223, 228
Incendiarism, punishment of, 409
In Cœna Domini, Bull, 230, 233, 476
Indestructibility of excommunicated corpses, 425
Index Expurgatorius, 476
Indifference to excommunication, 411
Indulgences, 481 *n.*
Infallibility of church, doubts as to, 388 *n.*
of pope, 391
Infants, communion of, 243
Ingilram of Metz, his canons, 48
on the duty of the state, 331
Innocent I. and St. John Chrysostom, 132
asserts appellate power, 133
assumes to rule the African church, 124
on necessity of Eucharist, 244
asserts supremacy of Rome, 272
on death-bed communion, 261
on requisites for excom., 267 *n.*
on reception of excom., 274 *n.*
on control over marriage, 319 *n*
confession alluded to by, 280 *n.*
Innocent II. and Louis le Jeune, 383
exacts an oath from Lothair II., 40 *n.*
excommunicates Montpellier, 383
Innocent III. asserts original jurisdiction, 83 *n.*
claims that bishops are delegates of popes, 150 *n.*
establishes appellate jurisdiction, 158
limits clerical exemption, 209
lays interdict on England, 381 *n.*
his estimate of papal power, 386
uses excom. to collect debts, 440
complains of abuse of his letters, 452
his treatment of Philip Augustus, 473
Innocent IV. grants pallium gratuitously, 145 *n.*
deposes Frederic II., 132 *n.*
inquisition, excommunicates believers to, 408
Innocent XII. anathematizes the Declaration of 1682, 472
Inquisition, excommunicates delivered to, 408
Insane, Eucharist forbidden to, 469 *n.*
Inscription by accusers, 269
Interdict, introduction of the, 311
of England under John, 381
of Venice, fruitless, 230, 471
regulations of, 383 *n.*
for receiving excommunicates, 395
for non-enforcement of excommunication, 397, 403, 404, 405, 412
extension of, 456
for questions of debt, 442, 448
abusive use of the, 463
fees for removing, 463 *n.*
against sovereigns, 472
Investitures of bishops, 87, 357, 380
Ipso facto excommunication, 457
preserved by Council of Trent, 466
in Bulls "In Cœna Domini," and "Apostolicæ Sedis," 230, 233, 476
Irenæus on Roman primacy, 113
rebukes Victor of Rome, 114, 290
on corruption of the church, 245
on avoidance of heretics, 250
Irish, slavery among the, 553
jurisdiction accorded to the church, 77
Isidor Mercator, or Peccator, 47
Isidor of Seville on the duty of the state, 314
Islamism, influence of, 552
Italian reformers, modern, 240 *n*
Italy, primitive church of, 123
clerical immunity established in, 182
disregard of excom. in, 364
laws on excommunication, 414
Sicilian Constitutions, 292, 414
Milanese legislation, 414
Ivo of Chartres on royal supremacy, 339
Izeshne sacrifice in Mazdeism, 243

JAGGS for penitents, 507
Jean II., his laws on excom., 403
Jerome, St., on power of priesthood, 249
Jerome of Brandenburg, charter of, 395
Jerome of Prague, his trial, 30
on indulgences, 482 *n.*
Jerusalem, its quarrel with Antioch, 120
Assises de, clerical immunity in, 192 *n.*
Jesus, forgiveness taught by, 236
Jews, expulsion from the synagogue, 244, 249
indirect excommunication of, 448
forbidden to hold Christian slaves, 561
John I. sent as envoy by Theodoric, 19
John II. (Cyprus) sells indulgences, 459 *n.*
John II., his instructions from Athalaric, 20
John III. and the case of Salonius, 140
John VIII. selects the emperor, 39
establishes the authority of the Decretals, 48 *n.*, 50 *n.*
assumes control over episcopal nominations, 98, 103
insists on use of pallium, 148
assumes the pardoning power, 162
his abuse of excommunication, 333
legislates for the Goths, 340
anathematizes rebels, 341
John X. admits the secular appointment of bishops, 94 *n.*
John XII. defines the sources of imperial power, 39
John XXII., his definition of imperial power, 40

John XXII.—
draws up the code of taxes of the penitentiary, 163
John XXIII. enforces usury by excommunication, 447
causes sale of indulgences, 482 *n.*
John of Antioch, his quarrel with Jerusalem, 121
John the Faster of Constantinople, 122
John of C'inople submits to Rome, 295
John of England, interdict under, 381
John of Philadelphia, apostolic vicar, 24
John of Prag asserts clerical immunity, 211
Jonah of Orleans on disregard of excom., 327
Jongs for penitents, 507
Judges, ecclesiastical, corruption of, 453
Julian re-enacts the Senatusconsultum Claudianum, 546
Julius I., appellate power conferred on him, 118, 129
his epistle to C. of Antioch, 15
Junia Norbana (lex) on freedmen, 533
Jurisdiction, confusion of civil and spiritual. 83 *n.*, 327
ecclesiastical, origin of, 74
not favored by Valentinian III., 76
encouraged by Justinian, 76
extended under the Barbarians, 77
especially by the Wisigoths, 78
under the Franks, 80
objected to by the church, 80
extended over freedmen and orphans, 80, 568
abolished by Charlemagne, 81
enforced by the forgeries, 83
enlarged by Charles le Chauve, 85, 338
extent of, in middle ages, 84 *n.*
supremacy of, 174
enforced by the state, 336
papal, extended by Innocent III., 83 *n.*
evils arising from, 451
universal, claimed by Rome, 126
of the kirk-sessions, 498
Jury of barbers, 216
Justification by faith, 484
Justin I. submits to Rome, 295
Justin II. sells episcopal appointments, 100
Justin Martyr, his account of Eucharist, 240
Justina, Empress, overcome by St. Ambrose, 282
Justinian, his treatment of the papacy, 20
enlarges episcopal jurisdiction, 76
on election of bishops, 100
his legislation on clerical immunity, 181
enforces supremacy of the state, 182
controls excommunication, 273
his delay in authorizing the pallium, 142
Justinian—
his detestation of slavery, 549
laws in favor of freedom, 550
on ordination of slaves, 573
Justinian II. fails to subdue the papacy, 24
Juvenal on cruelty to slaves, 529

KINGS, deposition of, by popes, 363
divine right of, enforced by excommunication, 515
Kirk-sessions, their power and its exercise, 498
Knox (John) on functions of minister, 497
his influence on Scottish kirk, 498
enforces segregation, 504

LACTANTIUS on manumission, 537
on equality of master and slaves, 539
Laity, their separation from the clergy, 300
not allowed to enter the church without permission, 62
not allowed to accuse the clergy, 70
deprived of voice in episcopal elections, 99
Lambert of Spoleto and the papacy, 340
Lambeth, council of, in 1261, 195, 397
Languedoc, estates of, their complaints, 218, 443
Laodicæa, council of, in 320, 87, 99 *n.*, 240 *n.*
Latæ Sententiæ excommunication, 457
Lateran, council of, in 1102, 374
in 1215, 475 *n.*
Latin church, its relations with slavery, 553
Latini, a class of freedmen, 533
abrogated by Justinian, 552
Law, secular, subjected to the canons, 68
supplemented by excom., 436
Laws, Barbarian, on slavery, 554
Lawyers, privilege of, 448
Leeches, excommunication of, 431
Legislation, imperial, on church matters, 17
of the Franks, how conducted, 62
Legislative functions of the church, 255
Le Mans, synod of, in 1248, 481 *n.*, 458
Leo (Emp.), his law on clerical immunity, 180
on *lex talionis*, 273
prohibits ordination of slaves, 573
Leo the Isaurian, 25
excom. by Gregory II., 26
obtains the churches of Illyricum, 126
Leo I. and the council of Chalcedon, 15
on the council of Constantinople, 16
his legates at Ephesus, 122, 138
sends forged canons to Chalcedon, 122

Leo I.—
establishes the prerogative of Rome, 136
his quarrel with Hilary of Arles, 136
his doctrine as to supremacy of St. Peter, 136
his absolution of Theodoret of Cyrus, 137
his falsification of Sardican canons, 138
his rules for penitents, 257, 258
on death-bed communion, 261
on abuse of excommunication, 272
affirms excom. of dead, 264
excommunicates Dioscorus, 292
forbids general excommunication, 311
prohibits ordination of slaves, 572
Leo II. restrains warlike ardor of clerks, 314
Leo III., his servility to Charlemagne, 37
is tried by Charlemagne, 37
crowns Charlemagne, 37
invades the imperial jurisdiction, 41
vainly resists the insertion of *filioque* in the creed, 65
admits the secular appointment of bishops, 94 *n.*
submits to imperial jurisdiction, 187
Leo IV. promises obedience to the imperial laws, 67
admits the royal nomination of bishops, 98
Leo X. on clerical immunity, 219
his taxes of the penitentiary, 163
his concordat with France, 395, 404
excommunicates Luther, 486
Leo XIII. on marriage, 318 *n.*
Leptines, council of, in 743, 93
Lerida, council of, in 523, 559
Letters of communion, 273
of excommunication, 424, 453
papal, abuses arising from, 451
Leudovald of Bayeux, first interdict by, 312
Lever, Ralph, on abuses of excommunication, 511
Lex talionis applied to excom., 269
Liberius, persecuted by Constantius, 18
Libertinus of Fondi, 305
Liberty-cap worn by freedmen, 533, 550
Libian, bishop, his use of excom., 334
Library protected by excom., 435
Libya, governor of, his excom., 281
Liége, synod of, in 1287, 481 *n.*
bigamous clerks in, 212
Liégeois, burial of Henry IV. by the, 379
Limoges, second council of, in 1031, 383 *n.*, 423
Linnens for penitents, 506
Litigation, encouragement of, 454
Litteræ formatæ, or commendatitiæ, 273
Livy on increase of slaves, 528
Llywelyn, Prince of Wales, 399
Lochiell, his description of kirk-sessions, 498
Lollards forced to worship images, 30 *n.*
of Kyle, 479
Lombard law, accusations between clerks and laymen in, 72
benefit of clergy in, 186
rights of church under, 301 *n.*
on slavery, 558
Lombards assist Gregory II., 26
their reception of Henry IV., 368
Lombardy, clerical immunity in, 203
London, council of, in 1342, 397
citizens of, complain of excommunicat on, 513
Lothair I. crowned by Paschal I., 43
reduces Rome to subjection, 43
receives promise of obedience from Leo IV., 67
prohibits bigamy, 321
his edict of 824, 166
donation to John of Trieste, 81 *n.*
he deposes Louis le Débonnaire, 329
he protects Ebbo of Rheims, 152
he pledges the state to enforce excommunication, 328
Lothair II. restores Innocent II., 40 *n.*
Lothair of Lotharingia forbidden to influence episcopal elections 98
his marriage with Teutberga, 168
he abandons her for Waldrada, 169
is arraigned by Nicholas I., 170
submits to the papal decision, 172
endeavors to elude it, 172
admitted to ordeal by Adrian II., 173
dies at Piacenza, 174
Louis II. attacks Nicholas I., 171
his claims on Lotharingia, 340
Louis le Bègue, oaths given at his coronation, 109
Louis le Débonnaire declares against image worship, 28 *n.*
crowned king of Aquitaine by the pope, 36
crowned emperor, 41
reduces Leo III. to subjection, 42
sends Lothair I. to Italy, 43
his supremacy over the church, 66
dethroned by his sons, 69
forbids accusations between clerks and laymen, 72
legislation protecting the clergy, 73
he grants the right of episcopal election, 96
but exercises the right of appointment, 96
disregards the appellate jurisdiction of Rome, 146
his donation to St. Peter, 165
his disregard of clerical immunity, 187
ecclesiastical cases tried by him, 189
grants the Roman law to Lombard church, 301 *n.*

Louis le Débonnaire—
submits to penance at Attigny, 326
extends and enforces spiritual jurisdiction, 328
is degraded and subjected to penitence, 329
forged decree attributed to, 333
Louis le Germanique, his control over the church, 67
Louis, St., on clerical immunity, 208
his laws on excom., 400, 404
on excom. for debt, 441
Louis VII. and Archbishop of Bourges, 384
Louis X. on clerical immunity, 208
on excommunication, 401
Louis XIV. creates mixed tribunals, 231
his independence of the church, 471
Louis II. of Bourbon procures burial for his father, 445
Louis of Bavaria, his quarrel with the papacy, 192 *n.*
Lucius III. uses excommunication to collect debts, 440
Lull, his death for disregarding the church, 307
Lull, St., appeals to Rome, 144
neglects to apply for pallium, 145
Lupus of Ferrières on papal simony, 58 *n.*
Luther on clerical immunity, 221
slow progress made by, 480
his ninety-five propositions, 482
his sermon on excom., 485
he asserts the right of private judgment, 485
his excommunication, 486
his treatise on the captivity of the church, 487
he denies sacramental ordination, 488
he excommunicates the pope, 488
and burns the bull and canon law, 489
final doctrines of his followers, 491
Lutheran doctrines as to church and state, 491
as to excommunication, 492
Lyndesay, Sir David, on clerical immunity, 222
on indulgences, 482 *n.*
Lyons, council of, in 517, 312
in 567, 141, 570
in 1274, 482 *n.*
curé of, his sacrilege, 420

MACEDONIA, bishops of, complain of Rome, 133
quarrel over churches of, 125
Macon, council of, in 531, 185, 561
in 585, 80, 187 *n.*, 313, 562, 569
Magna Charta guaranteed by excommunication, 382
Mainz, see of, its relations to the forgeries, 48, 68, 144
clergy of, resisting Rome, 55 *n.*
council of, in 813, 72, 322, 325 *n.*
in 847, 67, 72
Mainz, council of—
in 851, 72 *n.*
in 1451, 483 *n.*
Manichæism, influence of, 541
Manumission, ceremonies of, in Rome, 531
restricted by Augustus, 532
regarded as a pious act, 537, 543, 564
at the altar, 543, 464, 568, 570 *n.*, 575 *n.*
restrictions removed by Justinian, 549
of church slaves, 565
Mapes, Walter, on Roman avarice, 56 *n.*
Maranatha, anathema, 239
Marca, P., de, on the grant of Adrian, 94 *n.*
Marcian (Emp.) and council of Chalcedon, 16, 139
suppresses Alexandrian insubordination, 293
Marcion, his appeal to Rome, 127
Marcion of Arles, his heresy, 114
Marcovefa, her fate, 310
Margaret of Parma forces the council of Trent on the Netherlands, 468
reproves abuse of excom., 470
Marriage, relations of early church to, 318
control gradually acquired over it, 318
incestuous, prohibited, 322
doctrine of spiritual affinity, 319
prohibited during penitence, 257
during interdict, 422
use made by the church of its power over, 356
of slaves, 540
between freeman and slave, 551
between freewoman and slave, 526, 545, 550, 557, 564
Married clerks subjected to secular courts, 207, 209, 212, 215
immunity granted them at Trent, 226
Married men, benefit of clergy extended to, in England, 198
refused in France, 215
Marsiac, council of, in 1326, 443
Marsiglio of Padua on the donation of Constantine, 179 *n.*
on clerical immunity, 192 *n.*
Martial, case of, 127
Martin I., exile of, 24
Martin V. on appellate jurisdiction of Rome, 84 *n.*
on clerical immunity, 201
excommunicates Peter de Luna, 393
his concordats, 394
Martin, St., of Tours, delegates his judicial functions, 76
Martin of Arles on excommunication of animals, 433
Martinus Polonus, his Chronol. Pontificum, 95 *n.*
Mary Magdalen, church of St., 395
Mary, Queen, restores benefit of clergy, 198
Mass, form of, in Mazdeism, 243

Massachusetts, benefit of clergy in, 200 *n.*
Mathias of Hungary restricts ecclesiastical jurisdiction, 85 *n.*
Matthew of Vendôme on papal power, 386
Maurice (Emp.) his control over the church, 22, 23
Maurice of Rouen, interdict by, 420
Maximus (Emp.) excommunicated by Ambrose, 282
Maximus of Spalatro, 298
Maximus of Valence, case of, 135
Mazdean sacrifices, 243
Meals, sacrificial, 248
Meilleraie, Duc de la, case of, 472
Melauchthon, his apology for Augsburg Confession, 492
Melchiades (Pope) appointed judge by Constantine, 128
Meletius, St., of Antioch, 17
Melun, council of, in 1216, 399
Merida, council of, in 666, 567
Mermeillod (Bish.) on divinity of Pius IX., 389
Merovingians, their control over the church, 61
sale of bishoprics by, 89
their contempt for excommunication, 312
Metz, synod of, condemns Teutberga, 169
Mexico abolishes clerical immunity, 232
Miguel de Santa Maria justifies perjury, 438
Milan, equality of, with Rome, 124
clerical immunity in, 202
schism in church of, 358
laws of, on excommunication, 414
Military habits of clerks, 314
service in Rome, 525
Minucius Felix on slaves as brethren, 539
Miracles necessary for protection of church, 304
character of Italian, 305
of Frankish, 307
of the Eucharist, 242 *n.*, 244 *n.*
Modoin of Autun disregards clerical immunity, 189
Monasteries, slaves of, 566
as asylums for slaves, 572, 574
Money payment for indulgences, 481 *n.*
Montoires, 437, 472
Montanus on unpardonable sin, 254
Montpellier, consuls of, excom., 383
Muratori on the donation of Louis le Débonnaire, 166 *n.*
Murder justified by Urban II., 379
of slaves, 529, 536, 544, 556, 557, 559, 560
Myre's, John, formula of excom., 382

NANTINUS of Angoulême, his fate, 309
Naples, appellate jurisdiction of Rome in, 158
clerical immunity in, 202
excommunication in, 414
Napoleon I. adopts the Declaration of 1682, 472 *n.*
Nature, excommunication of, 426
Nemours, council of, in 1096, 206
Nero humanity to slaves under, 535
Netherlands, remonstrances against council of Trent, in the, 227 *n.*
reception of council of Trent in the, 468
Neustrian bishops, their letter to Louis le Germanique, 97
on oaths of allegiance, 109
New Grenada, complaints against the clergy in 1745, 231
abolishes clerical immunity, 232
Nicæa, council of, in 325, 99 *n.*, 119, 243, 261, 268, 274 *n.*, 290
in 787, 64, 99
Arabic canons of, 278
Nicene creed, alteration in, 64
Nicephorus Phocus sells bishoprics, 100
Nicetius, St., of Trèves, 310, 321
Nicholas de Claminges on the papacy, 105 *n.*, 450
on concordats, 104 *n.*
on papal exactions, 453
on abuse of excommunication, 461
Nicholas I. asserts the freedom of episcopal elections, 98
confines them to the clergy, 99
his vigor in the case of Ebbo, 152
in the case of Rothadus, 153
adopts the False Decretals, 154, 162
his domineering spirit, 168 *n.*
exalts the pardoning power of Rome, 162
interposes in favor of Teutberga, 170
condemns Gunthair and Thietgaud, 170
is attacked by Louis II., 171
triumphs over the Lotharingian prelates, 172
excommunicates Waldrada, 173
establishes supremacy of ecclesiastical jurisdiction, 174
asserts clerical immunity, 192
assimilates the popes to God, 387
Nicholas V. grants indulgences, 459 *n.*
Nicholas (St.), story of his relic, 481 *n.*
Noachian curse, slavery attributed to, 538
Norman kings of Naples and the appellate power, 158
Normandy, clerical immunity in, 194, 207
Nougaro, council of, in 1290, 452
Novatians, their heresy, 248 *n.*, 254
Noyon, council of, in 1344, 210, 212
Nunez Sancho of Roussillon, 406
Nürnberg decree of Frederic I., 409
diet of, grievances of the, 160, 221, 447, 462

OATH of allegiance exacted of the popes and Romans, 43
exacted of bishops and clergy, 107
its significance, 107

Oath of allegiance—
gradual change in its character, 143, 147 *n.*
release from, by the popes, 162, 377
Obedience, implicit, claimed for the church, 86
enjoined by the state, 314
Oblations, Eucharistic, their nature, 241
of cruel masters rejected, 539
Occupations forbidden to Christians, 279
Odoacer, his law on church property, 18
his control over papacy, 88 *n.*
Œcumenic patriarch, title of, 122
Onesimus, 523
Opsalboom, clerical immunity in laws of, 192 *n.*
Orange, council of, in 441, 263, 274 *n.*, 548, 569
Ordeal of Eucharist administered to Lothair, 173
Ordenamiento de Alcalà, 79 *n.*
Ordination, sacramental, denied by Luther, 491
of slaves, 571
general restrictions on, 572
Organization of primitive church, 112
Oriental influences in early church, 541
Origen excom. after death, 265
Orleans, council of, in 511, 62, 559, 574
in 538, 184, 575
in 541, 184
in 549, 559, 569, 575
in 554, 62
in 849, 89
Orphans protected by the church, 80
Ostrogoths, their control over the church, 18
Otho the Great, his control over bishoprics, 94 *n.*
legend of his death, 349
Otho III., his control over the papacy, 94 *n.*
he denies the donation of Constantine, 167 *n.*
Otho IV. and the laws of Charlemagne, 54
admits appellate jurisdiction, 158
Outlawry of excommunicates, 363, 396, 407, 409
of heretics demanded by Leo X., 486
Owen of Gwynnedd and bishopric of Bangor, 104

PAGAN mockery of excom., 271
Pallium, introduced in aid of papal jurisdiction, 142
at first requires consent of emperor, 142
powers bestowed with it, 142
St. Boniface endeavors to revive it, 143
complaints of papal exactions in its bestowal, 144
reluctance of prelates to apply for it, 145
privilege of appeal attached to it, 146
alluded to by Theodulf, 110 *n.*
Pallium—
John VIII. tries to make it obligatory, 148
its utility in establishing papal supremacy, 147 *n.*
delay in adopting it, 148 *n.*
objections to it in 1786, 148 *n.*
Papacy, cause of its elevation in the seventh century, 25
rendered independent of Constantinople, 26
its subjection to the Carlovingians, 37
its control over the Empire, 39
strives for independence, 43
its use of forgery, 46
its greed and avarice, 55 *n.*
its claim of omnipotence, 386
it infects the whole church, 391
concentration of authority in, 449
its inevitable abuses, 451
its pretensions to-day, 477
Papal power over councils, 15
apocrisarii at Constantinople, 22
autocracy denied by Hincmar, 50
claims of control over general councils, 15, 21
over episcopal nominations, 98
collectors, exactions of, 453
dispensations, scandal of, 164
degradation in tenth century, 176
elections, control of by the sovereign, 19, 20, 22, 24, 36, 37, 42, 44, 94 *n.*
exactions, 55 *n.*, 144, 145 *n.*, 148 *n.*, 450
excommunication despised, 172 *n.*, 341, 344
Jurisdiction (see *Appellate* and *Popes*).
letters, abuses of, 452
reception of, forbidden in France, 473 *n.*
monitoire annulled in Alsace, 472
power of dethronement, 363
simony justified, 58 *n.*
supremacy established, 175
absoluteness of, 385
Pardoners, 481 *n.*
descriptions of, 482 *n.*
Pardoning power assumed by Rome, 162
conceded by the Welsh laws, 163
Paris, council of in 557, 90
in 615, 91, 185, 187 *n.*, 569
in 825, 28 *n.*
in 882, 95
in 1105, 374
in 1528, 106 *n.*
Huguenot council of, in 1565, 494
Parker, Archbishop, on excom., 510
Parlement of Paris, enforces secular jurisdiction, 214, 217
on excommunication, 401, 404
Parliament (Eng.) curtails benefit of clergy in 1402, 196
Long, on excommunication, 517
retains control over church, 518
Parliament, Scotch, removes civil penalties of excommunication, 508
Partidas, Siete, clerical immunity in, 192 *n.*, 205

Partidas, Siete—
on eccles. jurisdiction, 78 *n.*
on excommunication, 407
Paschal I. deprecates imperial resentment, 42
crowns Lothair I. 43
Paschal II., his venality, 57 *n.*
he absolves Philip of France, 374
denounces a new heresy, 375
releases Henry V. from his oath, 377
forced to abandon the investitures, 380
Paschasinus of Lilybæum, 16, 122
Paschasius Radbertus, his account of the forgeries, 67
Paterfamilias, powers of, 527
Patriarch, powers of the, 278
of Constant., his legal title, 122
of Constantinople, his relations with emperors, 120
Patriciate of Rome, the, 36
Patrick, St., on redemption of captives, 563
Patrons, their claims on freedmen, 534, 546
Paul, St., encourages arbitration, 74
his teachings, 238
on segregation of sinners, 249
his epistle to Philemon, 523
Paul III., his project of reformation, 58 *n.*, 160, 391
excommunication by, 437
Paul IV., project of reformation by, 391 *n.*
Paul V., his quarrel with Venice, 230, 471
Paul of Bernried on subjection of the empire, 33 *n.*
Paul of Samosata, 115
Paulinus of Aquileia, 63
Paullus Æmilius reduces Epirots to slavery, 528
Pavia, synod of, in 876, 340
Pazzi, conspiracy of the, 462
Peculium of slaves, 562
Pedaneus Secundus, case of, 531
Pedro II. (Aragon) on excom., 407
Pelagius I., appointed by Justinian, 23
decretal attributed to him, 149 *n.*
on necessity of Eucharist, 244
Pelayo, Alvarez, 40, 87 *n.*, 205, 389
Penal servitude abolished by Justinian, 551
Penitence, 252
its enforcement, 253
simplicity of, in early times, 253
its four stages, 253
tendency to increased severity, 254
expands into a criminal code, 255
lengthened terms of penance, 255
penalties and disabilities added, 256
indelible character of, 257
it enhances sacerdotal authority, 258
alleviations of, for the rich, 326
inflicted on Louis le Déb., 329
on Emp. Henry IV., 369
in Scottish kirk, 506
stool and pillar of repentance, 506
the harden-gown, 506
Penitence in Scottish kirk—
the branks, 507
the jaggs, 507
posthumous, 384, 425
Penitentiary, taxes of the, 164
Penitents, disabilities of, 256
ineligible to holy orders, 257
safeguards for, 327
Pepin le Bref and the church, 32
he disapproves of images, 27 *n.*
his grant to the Roman Republic, 35
he confirms clerical immunity, 186
his policy with regard to the church, 315
he enforces excom., 317
he prohibits marriage in fourth degree, 321
Pepin of Italy crowned by the pope, 36
he requires oath of allegiance, 107
his laws on clerical immunity, 186
Perjury justified by Urban II., 377
by Miguel de Santa Maria, 438
Persecution by Christian emperors, 277
Peru, excommunication of ants in, 434
Peter, St., bestows the imperial crown through the popes, 39
his Jewish exclusiveness, 249
forged epistle of, 35
Peter d'Ailly on corruptions of the church, 159
on exactions of papal curia, 58 *n.*
Peter the Venerable, miracle by, 263 *n.*
Peter Cantor on papal power, 390
on corruptions of church, 454
Peter Moggus of Alexandria, 293
Peter of Braga and the pallium, 148 *n.*
Peter de Luna, excom. of, 393
Petronia (lex) on gladiators, 535
Philemon, epistle to, 523
Philip I. (France), his excom., 373
his submission, 374
Philip II. on clerical immunity, 207
Philip III. on clerical immunity, 207
on excommunication, 401
Philip IV. declares ecclesiastics incompetent as judges, 80 *n.*
on clerical immunity, 207
on excommunication, 402
Philip VI. restricts ecclesiastical jurisdiction, 84 *n.*
complains of clerical immunity, 210
restricts it, 212
Philip II. (Spain), his control of the church, 470
Philip Count Palatine, excommunication of, 385
Philippo Maria Visconti, 204
Phillips defends the Isidorian theories, 59 *n.*
Phocas admits the supremacy of Rome, 123 *n.*
Photius, excommunication of, 271
Piacenza, council of, in 1095, 373
Pierre of Bourbon, burial refused to, 444
Pigeons, excommunication of, 434
Pilgrimage of Grace, 198
Pisa, bishop of, hanged by the Florentines, 462

Pistes, capitulary of, in 862, 336
edict of, in 864, 337
Pithou, Pierre, his liberties of Gallican church, 471
Pius III., his Bull of Reformation, 223
Pius V. urges the suppression of concubinage, 229
forbids medical aid to the unconfessed, 475 *n.*
Pius VII. excommunicates Napoleon, 472 *n.*
Pius IX. maintains clerical immunity, 232
his bull "Apostolicæ Sedis," 233, 476
forbids medical aid to heretics, 475
Pliny, his torture of Christian slaves, 571 *n.*
Poissy, colloquy of, 30 *n.*
Poitiers, council of, in 1100, 374
Poland, clerical immunity abolished, 229
excommunication in, 415
Politics, control of the church over, 478
Pollio, Vedius, his cruelty, 529
Polycarp and Anicetus, 113
Polycrates of Ephesus asserts independence, 290
Pontyon, synod of, in 876, 85
Poor of the church, fed on Eucharist, 242
Popes not consecrated without consent of emperor, 42
to be tried by imperial council, 18
by emperor, 37
supreme original jurisdiction of, 289
not recognized in early church, 290
assumed in the dissensions of the East, 292
asserted over Constantinople, 293
abolished by Justinian, 297
asserted in the west, 298
case of Maximus of Salona, 298
omnipotence of, 387
are gods on earth, 390
Portugal, reforms suggested by, at Trent, 224
Poulet, Sir Amias, his promises, 513
Powder and ball, exorcism of, 434 *n.*
Prag, council of, in 1365, 211
in 1374, 211
in 1377, 456
Prayers for those in slavery, 540
Prerogatives, supernatural, growth of, 300
Pretextatus of Rouen, 141, 312
Priesthood emancipates the slave, 573
Priesthood denied by Luther, 487
Priests superior to angels, 388
Primitive church, organization of, 112
Prohibited degrees of marriage, 319
Property, church, guarded by curses, 302
excommunication for recovery of, 437
Propitiation, penitence assumed as a, 257 *n.*
Proscription for excommunicates, 411
Prostitution of slaves, limited by Hadrian, 535
Provisors, statute of, 398
Prussia limits excommunication, 477
Pseudo-Isidor (see *Forgeries*).
Purgatory, rise of doctrine of, 262 *n.*
Puritans, complain of excom., 512
endeavor to retain it, 518
Pyrrhus of Constantinople, excommunication of, 271

QUÆSTUARII, 481 *n.*
Quarterly curse in England, 382, 397, 457, 458
Quartodeciman controversy, 290
Quinisext in Trullo rejects the supremacy of Rome, 123 *n.*
Quintianus, St., of Auvergne, 89

RABELAIS on the decretals, 51
Raimfroy of Rheims, case of, 190
Ratherius of Verona on contempt of clergy, 345 *n.*
Rats, excommunication of, 430
Ravenna assumes equality with Rome, 124
synod of, in 877, 148, 192, 335 *n.*
Raymond of Nismes on clerical abuses, 210
Reading test in benefit of clergy, 197, 199
Rebellion, the Great, its influence on excommunication, 518
Reception of excommunicates, 274
Redemption of slaves, 570
Reform, project of, at Trent, 226, 465
character of the Tridentine, 466
Reformation attempted by Pius III., 223
Reformation, controversy on image-worship in the, 30 *n.*
gradual progress of, 480
Reformers, their assaults on the church, 221
Relics, reverence inculcated for, 307
Relics, false, sales of, prohibited, 482 *n.*
Religious privileges for slaves, 560
Remission of sins, Luther on, 484
Remy, St., Testament of, 34 *n.*
Remy of Coire introduces the forgeries, 50
Repasts, sacrificial, 243
Rheims, council of, in 625, 91, 561, 566, 570
in 1303, 481 *n.*
in 1408, 403
Rhys of Wales, excommunication of, 384
Ricaswind, laws of, on episcopal jurisdiction, 78
Richard II. on excommunication, 398
Richardot of Arras defends clerical immunity, 227 *n.*
urges reception of council of Trent, 468
deplores abuse of excom., 470
Richstich Landrecht on papal power, 390
Riculfus of Mainz introduces the false decretals, 48
Rimini, synod of, in 360, 14
Ring, gold, permitted to freedmen, 552

Ripuarian law, rights of church under, 201 *n.*
slavery under, 557, 568, 570
Robber synod of Ephesus, 121, 137, 269, 292
Robert le Fort obtains abbey of St. Martin, 102
Robert the Good of Naples, 220
Rodez, Bishop of, sells pardons, 214
Rodolph of Bourges permits civil suits of clergy, 190
Rodolph of Hapsburg admits appellate jurisdiction, 158
confirms the papal possessions, 38 *n.*
is selected by the pope, 39
remonstrates against interdict, 420
Rodolph of Suabia, his designs, 364
elected emperor, 370
his death, 371
Roisel, Jean, case of, 404, 417
Roman bankers protected by excommunication, 439
Roman bishopric, primacy of, 112
causes of its influence, 113
honorary rather than potential, 113
its liberality, 113
its superiority contested, 114
its influence with the emperors, 115
its progress in the Arian controversy, 117
its contest with Constantinople, 119, 121, 123, 138, 286, 293
its opportunities in the eastern quarrels, 120
its supremacy admitted by Phocas in 607, 123 *n.*
its efforts in the West, 123
its claim to universal jurisdiction, 126
based on the Sardican canons, 129
asserted by Innocent I., 133
denied by the African church, 134
submitted to by Gaul, 136
confirmed by Valentinian III., 136
rejected by the East, 137
established in the West, 139
overthrown by the Barbarians, 140
attempts to resuscitate it by the pallium, 142
endeavors of Boniface, 143
Charlemagne disregards the claim, 146
it is renewed by the false decretals, 149
established by Nicholas I., 153
evils of the system, 155
pardoning power assumed by, 162
jurisdiction (see *Popes*).
appellate (see *Appellate*).
Roman curia, exactions of, 55 *n.*, 144, 145 *n.*, 148 *n.*
its overgrown business, 451
its spirit at Trent, 465
Empire, autocracy of, 13
Roman—
law, the church privileged to use the, 301
Republic restored by Pepin, 35
Rome, sack of, by Guiscard, 371
forged councils, under Silvester, 42, 140 *n.*
synod of, in 384, 274 *n.*
in 488, 256
in 498 and 502, 18
in 501, 19
in 863, 170
in 877, 341
in 1075, 357
in 1076, 361
in 1080, 371
in 1102, 374
slavery in, 524
freeman not to be enslaved, 525
Rota, greed of the, 161
Rothadus of Soissons, case of, 153
Rouen, council of, in 650, 560
Roussillon, excommunication in, 406
Ruffec, council of, 441
Rufinus, his account of council of Nicæa, 178

SABBATH, rigidity of, in Scotland, 501
Sacerdotal power, commencement of the, 247
intervention denied by Luther, 484
Sachsenspiegel, excom. in, 412
Sackcloth for penitents, 506
Sacraments (see *Eucharist* and *Communion*.)
power obtained through the, 235
allowed during interdict, 383 *n.*
Sacrificial meats, 243
Sadler, Sir Ralph, complaints of, 513
Sagittarius of Gap, case of, 140
Saintes, synod of, in 579, 309
Salic law, wer-gilds under, 301 *n.*
on incestuous marriage, 320 *n.*
slavery in, 554, 555, 556
Salonius of Embrun, case of, 140
Salvation, the church's treasure of, 481 *n.*
Salzburg, council of, in 1418, 463 *n.*
in 1456, 424, 461, 483 *n.*
in 1548, 223
in 1569, 467
its code of discipline, 227
in 1573, 469 *n.*
Sanuti (Marino) on excom., 417 *n.*
Saragossa, council of, in 681, 567
Sardica, council of, in 367, 16, 87, 116, 274 *n.*
canons of, in favor of Pope Julius, 118
nature of the canons, 129
they are disregarded, 130
are revived by Rome, 133
and attributed to council of Nicæa, 133, 138
are rejected by the churches, 134
Saumur, synod of, in 1596, 74 *n.*
Sawtree, Wm., tried for Lollardism, 30 *n.*

Saxon emperors, their control over papacy, 94 *n.*
laws, on excommunication, 412
slavery in, 558
Saxons defeated by Henry IV., 358
fresh rebellion of, 365
Saxony, Charlemagne's organization of, 315
School-boys fed on remains of Eucharist, 242
Schoolmen, their theory of indulgences. 481 *n.*
Schools, Belgian, clerical opposition to, 477
Schwabenspiegel, founded on laws of Charlemagne, 54
papal supremacy in, 34 *n.*
clerical immunity in, 192 *n.*, 200
excommunication in, 410
Scotland, accusations between clerks and laymen forbidden, 72 *n.*
clerical immunity in, 192 *n.*
tyranny of kirk-sessions in, 498
civil penalties of excommunication abolished, 508
Scourging bodies of excom., 384, 425
Sebastian of Portugal, reforms suggested by, 224
Secular power, enforcement of excommunication by, 393
under Merovingians, 313
under Carlovingians, 316
in England, 396
in Wales, 397
in France, 398
in Spain, 405
in Germany, 408
in Italy, 413
in Poland, 415
in Hungary, 415
in Sweden, 415
interference of, prohibited at Trent, 467
resistance to this by the state, 468
Secularization of excommunication, 421
Segregation of excommunicates, 239, 247
origin of, 249
enforced by Stephen I., 250
becomes the general practice of the church, 251
examples of it, 252
effects of it, 253
revived by Carlovingians, 317
deprivation of intercourse and assistance, 393
punishment for its infraction, 394
reforms attempted at Constance and Bâle, 394
complaints of citizens of Berlin, 395
ulterior consequences, 396
mildness of, in Spain, 408
severity of, in Germany, 412
in Scottish kirk, 504
Seigniorial "droits de justice," origin of, 81
jurisdictions of the church. 209
Self-extinguishing candles, in excommunication, 348
Seligenstadt, council of, in 1018. 1[illegible]
Senatusconsultum Claudianum, 525, 545, 546, 550
Senchus Mor, slavery in the, 553
Senlis, council of, in 1326, 495
Sens, Archbishop of, his curse, 303
Sepulture, interdiction of, 422, 423, 444, 465
Serenus of Marseilles destroys images, 27 *n.*
Sergius I. defies the emperors, 24
Sergius II. asserts the jurisdiction of Rome, 152
Servitude, penal, abolished by Justinian, 551
Seville, council of, in 618, 567
in 1590. 438
Sicilian slaves, rebellion of, 530
Sicily, appellate jurisdiction of Rome in, 158
clerical immunity in, 202
excommunication in, 414
Siegfrid of Mainz and the pallium, 147 *n.*
his excommunication, 262
Siete Partidas, las (see *Partidas*).
Sigebert II., his control over the church. 62
Sigebod of Narbonne, his complaint, 340
Silvanus of the Troad, 76
Silverius buys the papacy. 20
his condemnation, 181
Silvester I., forged councils under. 42, 140 *n.*
epistles of, 181
Simancas of Badajos on image worship, 30 *n.*
on papal power, 386
Simony of the Roman curia, 55 *n.*, 144, 145 *n.*, 148 *n.*
justified, 58 *n.*
protected by excommunication, 419
Sin involved in lawsuits, 83 *n.*
Siricius, authority of his decretals, 124
he disclaims appellate jurisdiction, 130
on death-bed communion, 261
Sixtus III., forged trial of, 181
Sixtus IV., his abuse of excommunication, 455
excommunicates Florence, 462
Slave families, their separation forbidden, 544, 558
trade, military, of Rome, 528
international, forbidden. 561
owner, murder of, how punished, 531
women, their children slaves, 545
Slaveholding by the church, 561
Slavery and the church. 523
and the Eastern church, 5[illegible]
and the Latin church, [illegible]
an unnatural condition, 521
tolerated by the church. 537
Slaves devoted to combat with beasts, [illegible]
ordination of, [illegible]
Soissons, council of, in 744, [illegible]
in 863. [illegible]
in 1403, [illegible]
South American Republics, concordat of 1863, [illegible]

Spain, ecclesiastical jurisdiction in, 78 *n.*
resistance to Rome in 253, 127
in 1396, 106 *n.*
in 18th century, 161
its submission to Rome, 139
clerical immunity in, 192 *n.*, 204
maintained to a late period, 231
excommunication of animals in, 432
privilege of lawyers in, 448
slavery among the Goths, 567
proposes reforms at Trent, 224
laws on excommunication in, 405
influence of Gothic laws, 406
the Fuero Juzgo, 78 *n.*, 204, 406
the Siete Partidas, 78 *n.*, 192 *n.*, 205, 407
Spandel, Chris., on clerical vices, 229 *n.*
Spanish rule in Milan, 204
Spartacus, revolt of, 531
Speyer, burial of emperors at, 379 *n.*, 380 *n.*
Spiritual affinity, doctrine of, 319
authority all delegated from the pope, 449
Spoliation of the church, repressed by Charlemagne, 324
increases under the later Carlovingians, 231
in Gothic code, 340
Spottiswoode, John, his excom., 504
St. Andree, Bishop of, on usurers, 424
St. Andrews, kirk-sessions of, 502, 507
St Gall, monk of, his account of Charlemagne, 95, 108, 188
St. Macra, synod of, in 881, 38 *n.*
St. Martin, Abbey of, bestowed on the Capets, 102
monks of, their trial, 188
St. Riquier, Abbot of, case of, 404, 417
St. Savin, Valley of, 426
St. Tiberius, council of, in 1389, 217
Staphylus, Fred., his remonstrance at Trent, 224
State, the, seeks support from the church, 335
subjection of, to the church in 1869, 476
Statute of Provisors, 398
Stephen I. appealed to by the Lyonese, 114
his contest with the Spanish church, 127
with Cyprian, 290
on segregation of excommunicates, 250
Stephen II. forges an epistle of St. Peter, 35
crowns Pepin le Bref, 34
and Charlemagne, 36
appealed to by Boniface, 144
Stephen IV. crowns Louis le Débonnaire, 41
Stephen, St., of Hungary, his reverence for bishops, 35 *n.*
he forbids accusation of clergy, 73 *n.*
he grants clerical immunity, 192 *n.*
Sterility caused by excom., 427
Stoicism in early church, 538, 541
Stoning houses of excommunicates, 395
Strangers, letters of communion required by, 273
Suabian code (see *Schwabenspiegel*).
Sudra, indelible slavery of, 535 *n.*
Sulpicius, St, of Bourges, 307
Sulpicius Severus on authority of bishops, 115
Sunday, observance of, in Scotland, 501
manumission permitted on, 547
Supervision, minute, in the church, 279
in the Scottish kirk, 502
Supremacy, papal, established by Adrian II., 173
Supreme jurisdiction of Rome, 289, 385
Suze, Henri de, excom. by, 421
Swallows, excommunication of, 428
Sweden, clerical immunity in, 192 *n*
punishment of excom. in, 415
Syllabus of 1864, 233, 475
Symbol, Nicene, altered by Charlemagne, 64
Symmachus, his contest for the papacy, 19
Synesius complains of his judicial functions, 75
excommunicates Andronicus, 252, 281
his formula of excommunication, 275

TAXO, application of, to excommunication, 269
Tarentum, sack of, 528
Tarasius of Constantinople on the creed, 64 *n*
Tarragona, council of, in 516, 78
Tarragonensian bishops, their appeal to Rome, 139
Tassilo, constitution of, 570
Tatian, indifference as to slavery, 542
Taxes of the Penitentiary, 164
Tedaldo of Milan, 359, 360
Temporal penalties of excom., 392, 510
Temporalities of the church, 88
their evil influence, 474
Territorial jurisdiction of vassals, 81
restricted by Charlemagne, 82
Tertullian, his resistance to Rome, 116
reverence for kings taught by, 13 *n.*
on marriage ceremony, 318 *n.*
Testamentary manumission restricted, 532
restriction removed, 550
Testimony of excom. refused, 257, 404
Tetzel and his indulgences, 480
Teutberga, the divorce of, 168
married to Lothair, 168
divorced by synod of Aix, 169
appeals to Rome, 169
is taken back by order of Nicholas I., 172
entreats to be separated from him, 173
Tewdwr of Brecknock, his excommunication, 334
Theft, excommunication for, 345, 437
Theloall on excommunication, 512

Theocratic constitution of the church, 278
inevitable results of, 451
Theodatus imposes Silverius on the Roman church, 20
Theodebert of Metz and St. Nicetius, 310
Theodora, her treatment of Vigilius, 20
Theodore of Canterbury, 73 *n.*
on peculium of slaves, 562
Theodore of Mopsuestia, case of, 265
Theodore (Pope) excom. Pyrrhus, 271
Theodore Studita (St.) on slaveholding, 552
Theodoret of Cyrus, case of, 137
Theodoric, anti-pope, 374
Theodoric controls papal elections, 19
sends John I. as envoy, 19
enforces submission of church, 181
on denial of sepulture, 444
on murder of slaves, 557
Theodoric of Mainz summoned by the Vehmgericht, 201
Theodoric of Utrecht excommunicated for debt, 440
Theodorus and Proculus of Tours, 89
Theodosian code, forgery inserted in, 82
foisted on Charlemagne, 83
persecution in, 277
Theodosius the Great excommunicated by Ambrose, 283
his conscientiousness, 284 *n.*
his law on capital punishment, 285
laws in favor of slaves, 547
Theodosius II. on the confirmation of bishops, 100
transfers the churches of Illyricum, 126
his limitations on freedmen, 547
grants right of asylum, 548
Theodulf of Orleans, his imprisonment, 110 *n.*
admits the supremacy of Charlemagne, 63
Theophilus attacks Chrysostom, 120, 121
excommunicates Origen, 265
Theutmir and Dungal, 28 *n.*
Thietgaud of Trèves released from his oath, 162
condemned by Roman synod, 170
submits to the sentence, 171
Thionville, council of, in 845, 66, 97, 189
Thomas à Becket and Bishopric of Bangor, 104
he vindicates clerical immunity, 195
asserts clerical supremacy, 384
Thomas Aquinas on indulgences, 481 *n.*
opinions ascribed to him, 38 *n.*, 386
Three Chapters, the, 21, 125, 265
Thurstan of York, case of, 383
Tithes, enforced by Charlemagne, 316
by excommunication, 458, 464
lay jurisdiction over, 202 *n.*
Toledo, council of, in 400, 251, 279
in 589, 64, 183, 567
in 597, 561, 567
in 638, 567
Toledo, council of—
in 655, 567
in 675, 78, 183, 260 *n.*, 275
in 633, 64, 79, 311 *n.*, 406 *n.*
in 681, 92, 339, 405, 406 *n.*
in 1582, 439
Tolls, excommunication for collecting, 459
Tonsure as proof of clerkship, 209, 211
assumed to obtain immunity, 209, 214
respect claimed for it, 215
Torture of slaves in Salic law, 555
Tours, bishops of, under the Merovingians, 89
council of, in 567, 185
in 813, 322, 325 *n.*
Trade forbidden to penitents, 257
Trades forbidden to Christians, 279
Trades subjected to ecclesiastical jurisdiction, 211
Traffic in excommunications, 438
in indulgences, 481 *n.*
Travellers, letters of communion required by, 273
Treason, bishops punished for, under Carlovingians, 110
clerks punished for, in England, 196, 198
Treasury of salvation in the church, 481 *n.*
Trent, council of, on image worship, 29 *n.*
on appellate jurisdiction, 160
admission of clerical corruption, 229 *n.*
reforms requested of, 224, 464
reactionary spirit of, 465
device for eluding reformation, 225, 466
conservative character of reforms, 226, 466
opposition to reception of the council, 230, 468
on indulgences, 484 *n.*
Trèves, pallium granted gratuitously to, 145 *n.*
Trial of Leo III. by Charlemagne, 37
of animals, 430
Tribur, council of, in 895, 156, 192, 342, 560
diet of, in 1076, 365
Trieste, jurisdiction of, granted to bishop, 81 *n.*
Troyes, synod of, in 878, 340
Truce of God, clerical infractions of, 193
Turin, council of, in 401, 274 *n.*
Twelve Tables, law of, slavery in, 527
cruelty to debtors, 555
Tyre, council of, in 335. 14

UDO of Trèves and Henry IV., 365
Ulpian on slavery, 524
Umbrician matron, punishment of, 536
Unction, extreme, neglect of, 469
enforced by Pius IX., 475
United States, benefit of clergy in, 200 *n.*

Urban II. enforces clerical immunity, 206
excommunicates the Imperialists, 372
excommunicates Philip I. of France, 373
annuls oaths to excommunicates, 377
justifies murder, 379
grants indulgences at Clermont, 481 *n.*
Urban IV. uses excommunication to collect debts, 441
Urban V., his dread of excom., 455
Urban VI. enforces clerical immunity, 203
Urban VIII. re issues the bull "In Cœna Domini," 230
Urraca of Castile, case of, 384
Ursinus, the antipope, 17
Utrecht, Bishop of, excommunicated for debt, 440

VAISON, first council of, in 442, 260 *n.*, 268
Valence, clergy of, appeal to Boniface I., 135
council of, in 855, 101
Valencia, excommunication in, 437
council of, in 1566, 438
Valens enforces claims of service, 572
Valentinian I. re-enacts the Claudian law, 546
Valentinian II. rebuked by Ambrose, 282
his limitations on freedmen, 547
Valentinian III. and the council of Ephesus, 14
legislates in favor of bishops, 70
limits the episcopal jurisdiction, 76
confers universal jurisdiction on Roman Bishops, 136
his laws on episcopal immunity, 179
Value of slaves in Rome, 529 *n.*
Vannes, council of, in 465, 256
Vehmgericht disregards clerical immunity, 201
Venice, disregard of clerical immunity in, 230, 471
Verberie, synod of, in 752, 321
Vermin, exorcism of, 433
Verneuil, synod of, in 755, 188, 317, 322 *n.*
in 844, 67 *n.*, 97, 189, 332 *n.*
Verona, disregard of clerical privileges in, 202
Viaticum, not always efficacious, 264
control of, by Charlemagne, 316
neglect of, 409
Vic-en-Bigorre, excommunication procured by, 437
Vico, Fran. and Battista, 417
Victor I. and the Asian bishops, 114
rebuked for his pretensions, 290
Vienna, council of, in 1311, 482 *n.*
Vigilius, Pope, his career, 20
is excommunicated by Africa, 125
Vigilius—
bestows the pallium on Auxanius, 142
on excommunication of dead, 265
Vindicta, manumission by, 531
Virgil of Arles receives the pallium, 142
Visconti, they limit clerical immunity, 203
on excommunication, 414
Vislitza, statute of, 415
Vitoduranus on temporalities, 106
Vladislas II. restricts ecclesiastical jurisdiction, 84 *n.*

WAGER of battle offered by Lothair, 173
forbidden to ecclesiastics, 188
Wala presents the forged decretals to Gregory IV., 67
Walafrid Strabo on image worship, 28 *n.*
Waldrada a concubine of Lothair, 168
is married to him, 169
is separated by Nicholas I., 172
obliged to go to Rome, 173
Wales, ecclesiastics not competent as judges in, 79 *n.*
pardoning power of Rome admitted, 165
laws on excommunication, 398
on benefit of clergy, 192 *n.*, 194
ordination confers freedom, 575 *n.*
Walo of Metz, pallium granted to, 149
Weddings, regulations of, in Scotland, 501
Wee ks, excommunication of, 428
Weichbild, Saxon, on excom., 413
Weissenburg, Abbot of, 385
Weldon, Sir Andrew, on Scottish discipline, 498
Wenilo of Sens, his treachery, 110
he appeals to false decretals, 153
Wer-gilds for ecclesiastics, 301
Westminster, assembly of, 518
Wibald of Corvey, 419
Wiberto of Ravenna, becomes antipope, 364
his death, 371
Wickliffe, his opinion of decretals, 59
of Roman supremacy, 119 *n.*
of excommunication, 479
Widows protected by the church, 80
Wife of excommunicate, 401
Wilibert of Cologne, pallium refused to, 50 *n.*
Wilibert of Chalons, 102
Wilibrod sent as missionary by Sergius, 143
Willibald on excommunication, 494
William of Bavaria reproaches the church, 223
William II. of Montpellier, 383
William of Scotland, case of, 384
William of Sicily admits appellate jurisdiction, 158
William of Utrecht, his death, 364
Wimpfeling (Jacob), complaints of, as to pallium, 148 *n.*

Winchester, council of, in 1142, 38 *n.*
Winemar murders Fulk of Rheims, 343
disregards excommunication, 344
Wisigoths insert *filioque* in the creed, 64
enlarge episcopal jurisdiction, 78
refuse clerical immunity, 183
invoke the church in political compacts, 311 *n.*
on duty of state to enforce censures of church, 314
laws on sacrilege, 340
laws on slavery, 556
Witchcraft, persecution of, in Scotland, 500
Witnesses, numbers of, required in charges against clerks, 73
penitents ineligible as, 257
excommunicates ineligible as, 256, 404
slaves eligible as, 539
Wolff, Christian, on the donation of Constantine, 167 *n.*
Wolsey endeavors to reform the church, 198
Women, their marriage with slaves, 526, 545, 550, 557, 564
Worms, assembly of, on church spoliation, 324
Worms—
council of, in 868, 360 *n.*
in 1176, 360
Writ de excommunicato capiendo, 397, 510, 516, 519
de contumace capiendo, 520
Wulfarius of Rheims appears in secular courts, 187
Würdtwein on appellate jurisdiction, 160

YORK, synod of, in 1640, 513, 515

ZABARELLA (Card.), his project of reform, 456
Zachary, Pope, authorizes the dethronement of the Merovingians, 33
his description of Frankish clergy, 314
Zeno, his Henoticon, 293
papal toleration for him, 286
Zimiskes, John, renounces the sale of bishoprics, 100
Zozimus, his deceit as to Sardican canons, 133

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